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No. 485

Supreme Court, U. S.
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Ex. T.

Court of Appeals

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

GEORGE CORNELIUS MOORE and LESTER HAUGHTON,
Defendants-Appellants.

RECORD ON APPEAL

JOHN F. WILKINSON and
ISIDORE EHRMAN,
Attorneys for Defendant-Appellant
George Cornelius Moore,
2488 Grand Concourse,
Borough of Bronx,
New York City, N. Y.

I. SAUL FLEISCHMAN and
HENRY McDONOUGH,
Attorneys for Defendant-Appellant
Lester Haughton,
160 Broadway,
Borough of Manhattan,
New York City, N. Y.

SAMUEL J. FOLEY,
District Attorney of Bronx County,
Attorney for Respondent,
Bronx County Courthouse,
Borough of Bronx,
New York City, N. Y.

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Court of Appeals

STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

GEORGE CORNELIUS MOORE and LESTER HAUGHTON,
Defendants-Appellants.

Statement Under Rule 234.

This is an appeal by the defendants-appellants and each of them, from the judgment of conviction of Murder in the First Degree rendered against the defendants-appellants, and each of them, at a Term of the County Court of the County of Bronx, on the 14th day of April, 1947, before Honorable James M. Barrett, Judge of the said Court, and from each and every part thereof and from each and every intermediary order therein made. The indictment charged the defendants, and each of them, with the crime of Murder in the First Degree, and was filed on February 11, 1947, to which a plea of Not Guilty was entered by each of the said defendants-appellants.

John F. Wilkinson and Isidore Ehrman, Esqs., appeared for the defendant-appellant George Cornelius Moore at the trial herein, and are the attorneys for the said appellant on this appeal.

I. Saul Fleischman and Henry McDonough, Esqs., appeared for the defendant-appellant Lester Haughton at the trial herein, and are the attorneys for the said appellant on this appeal.

The People appeared by the District Attorney of Bronx County.

Notice of Appeal by Defendant Moore.

COUNTY COURT,

5

BRONX COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
Defendants-Appellant.

Sir:

6

PLEASE TAKE NOTICE, that the defendant, George Cornelius Moore, hereby appeals to the Court of Appeals of the State of New York from the judgment of conviction rendered against him in this Court on the 14th day of April, 1947, and from

each and every part thereof and from each and every intermediate Order therein made.

Dated: New York, April 28, 1947.

Yours, etc.,

JOHN F. WILKINSON and
ISIDORE EHRMAN,
Attorneys for Defendant,
Office & P. O. Address,
2488 Grand Concourse,
Borough of Bronx,
City of New York.

To:

SAMUEL J. FOLEY, Esq.,
District Attorney,
Bronx County.

To:

THOMAS A. CRYAN,
Chief Clerk of the County Court,
Bronx County.

10

Notice of Appeal by Defendant Haughton.

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK against GEORGE CORNELIUS MOORE, LESTER HAUGHTON, Defendants.	NOTICE OF APPEAL

11

Sirs:

PLEASE TAKE NOTICE that the defendant, Lester Haughton, hereby appeals to the Court of Appeals of the State of New York from the judgment of conviction rendered against him in this Court on the 14th day of April, 1947, and from each and every part thereof and from each and every intermediate order therein made.

Dated: New York, N. Y., April 29. 1947.

Yours, etc.,

12

I. SAUL FLEISCHMAN and
HENRY McDONOUGH,
Attorneys for Defendant
Lester Haughton,
Office and P. O. Address,
160 Broadway,
Borough of Manhattan,
City of New York.

Notice of Appeal by Defendant Haughton. 13

To:

SAMUEL J. FOLEY, Esq.,
District Attorney,
Bronx County,
New York City, N. Y.

THOMAS A. CRYAN, Esq.,
Chief Clerk of the County Court,
Bronx County,
New York City, N. Y.

Indictment. 14

COUNTY COURT

IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
Defendants.

15

The Grand Jury of the County of Bronx, by this indictment accuse defendants, George Cornelius Moore and Lester Haughton, of the Crime of Murder in the First Degree, committed as follows:

The said defendants, acting in concert with each other, late of the Borough of Bronx of The City of New York, in the County of Bronx, aforesaid,

on the 13th day of December in the year of our Lord one thousand nine hundred forty-six, at the Borough and County aforesaid, with force and arms, in and upon one James M. Burke, in the peace of the people then and their being, wilfully, feloniously and of their malice aforethought did make an assault, and a certain pistol, then and there charged and loaded with gunpowder and one leaden bullet, which said pistol they, the said defendants, in their hands then and there had and held, to, at, against and upon the said James M. Burke, then and there wilfully, feloniously and
17 of their malice aforethought did shoot off and discharge; and the said defendants, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot off, sent forth and discharged as aforesaid, him, the said James M. Burke, in and upon the head and body of him, the said James M. Burke, then and there wilfully, feloniously and of their malice aforethought did strike, penetrate and wound, giving unto him, the said James M. Burke, then and there with the leaden bullet aforesaid, so as aforesaid discharged, sent forth and shot out of the pistol aforesaid, by the said defendants, in and upon the head and body of him, the said James M. Burke, one mortal wound, of
18 the breadth of one inch, and of the depth of six inches, of which said mortal wound he, the said James M. Burke, from the said 13th day of December in the year aforesaid, until the 13th day of December in the same year aforesaid, at the Borough and County aforesaid, did languish, and languishing did live, and on which said last mentioned day, he, the said James M. Burke, at the Borough and County aforesaid, of the said mortal wound, did die.

And so the Grand Jury aforesaid do say that the said defendants, him, the said James M. Burke, in the manner and form and by the means aforesaid, wilfully, feloniously and of their malice aforethought did kill and murder, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SAMUEL J. FOLEY,
District Attorney.

Endorsements on Indictment. 20

Ass't. D. A. Atty.—Nicholas Delagi.
Foley, D. Atty.
Cal. No. 178/47

Counsel, see reverse.
Filed, 11th day of February, 1947.
1 & 2
Pleads, Not Guilty 2/19, 1947.

THE PEOPLE vs. 1. GEORGE CORNELIUS MOORE, p 2. LESTER HAUGHTON, p Defendants.	Murder in the First Degree (Section 1044, Penal Law) 21 (FIREARMS)

SAMUEL J. FOLEY,
District Attorney.

A TRUE BILL.
JOHN M. IRELAND,
Foreman.

22 *Endorsements on Indictment:*

(BILL ORDERED)

Barrett, J.

CONVICTED BY VERDICT OF JURY April 2, 1947,
OF MURDER IN 1ST DEGREE.

True Name—George Cornelius Moore
Age—35 years
Nativity—U. S.
Race—Colored
Nativity of father—U. S.
Nativity of mother—U. S.
23 Residence—No Home
Occupation—Tailor
Married—Yes
Read—Yes Write—Yes
Speak English—Yes
Religious Instruction—Cath.
Parents Living—Father living.
Temperate—Yes
Convictions—Yes

1941—Gen. Sess. N. Y. Co.
Assault 2°
Elmira Reformatory.

Jury Polled.

Barrett, J.

24

CONVICTED BY VERDICT OF JURY April 2, 1947,
OF MURDER IN 1ST DEGREE.

True Name—Lester Haughton
Age—24 years
Nativity—U. S.
Race—Colored
Nativity of father—British West Indies

Nativity of mother—British West Indies
Residence—741 Jennings St.
Occupation—Sheet Metal Worker
Married—No
Read—Yes Write—Yes
Speak English—Yes
Religious Instruction—Prot.
Parents Living—Father living.
Temperate—Moderately
Convictions—Yes

1939—Spec. Sess. Man.
Poss. of Gun. Coxsackie.

26

1940—Spec. Sess. Man.
Malicious Mischief.
Suspended.

1942—Gen. Sess. N. Y. Co.
Robbery, 2°.
Elmira Reform.

Jury Polled.

Witnesses:

No. 1 John F. Wilkinson
Isidore Ehrman a

No. 2 I. Saul Fleischman
Henry McDonough. a

27

1. George Cornelius Moore
2. Lester Haughton

April 14, 1947.

The defendants, and each of them, having been convicted of the crime of Murder in 1st Degree,

28 *Endorsements on Indictment.*

the sentence is that the defendants, and each of them, be and are hereby sentenced to the punishment of death, and it is

ORDERED, Adjudged and Decreed that within 10 days, they be delivered to the Warden & Agent of State Prison at Sing Sing, until week beginning Monday, May 26, 1947, and who is upon some day within the week so designated, to do execution upon them, and each of them in mode and manner prescribed by laws.

JMB
County Judge.

29

Order for Panel of Special Jurors.

At a Term of the County Court, of the County of Bronx, held at the Bronx County Building, No. 851 Grand Concourse, in the Borough of Bronx, in the City of New York, on the 26th day of February, 1947.

Present: HON. HARRY STACKELL, *County Judge.*

30

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
Defendants.

An indictment having been found in the County Court, held in and for the County of Bronx, on

the 11th day of February, 1947, against the above-named defendants, George Cornelius Moore and Lester Haughton, for the Crime of Murder in the First Degree, and issues of fact having arisen on said indictment, upon the pleas of not guilty entered thereto by the said defendants, and the District Attorney of the County of Bronx having applied for a special jury to try said issues, under the provisions of Article 18-B, Section 749aa of the Judiciary Law, and Samuel J. Foley, Esq., the District Attorney of the County of Bronx, having appeared in favor of said motion, and John F. Wilkinson, Esq., one of the attorneys for the defendant, George Cornelius Moore, and I. Saul Fleischman, Esq., one of the attorneys for the defendant, Lester Haughton, having appeared in opposition to said motion, 32

Now, upon reading and filing the notice of motion herein, the affidavit of Samuel J. Foley, Esq. duly sworn to the 19th day of February, 1947, in support of said motion, the affidavit of John F. Wilkinson, Esq. duly sworn to the 25th day of February, 1947, and the affidavit of I. Saul Fleischman, Esq. duly sworn to the 21st day of February, 1947, in opposition thereto, and upon the indictment against the defendants herein, filed in the County Court of the County of Bronx, on the 11th day of February, 1947, and after hearing Samuel J. Foley, Esq. in support of said application, and John F. Wilkinson, Esq. and I. Saul Fleischman, Esq. in opposition thereto, and it appearing to my satisfaction that by reason of the facts stated in the moving papers, an ordinary jury cannot be obtained without delay and difficulty to try said issues, and that by reason of the said facts, the due, efficient and impartial adminis- 33

fration of justice in this case will be advanced by the trial of the said issues by a special jury,

Now, on motion of Samuel J. Foley, Esq., the District Attorney of the County of Bronx, it is hereby

ORDERED, that the said application be and the same is hereby granted, and that the said issues of fact, in the said criminal action between the People of the State of New York and the said defendants, George Cornelius Moore and Lester Haughton, on said indictment, and the defendants' pleas thereto, be tried before a special jury drawn
35 and selected pursuant to the provisions of Article 18-B, Section 749aa of the Judiciary Law, and it is further

ORDERED, that the drawing of said special jury take place in the office of the County Clerk of the County of Bronx, on the 3rd day of March, 1947, at 12:00 o'clock noon of that day, and that one hundred fifty (150) special jurors be then drawn for the trial of said issues as aforesaid, and it is further

ORDERED, that the said special jurors so drawn shall attend at the County Court of the County of Bronx, Trial Term Part II thereof, to be held
36 at the Bronx County Building, No. 851 Grand Concourse, in the Borough of Bronx, in the City of New York, at ten o'clock in the forenoon on the 20th day of March, 1947, for the trial of said issues.

Enter,

H. S.,
J. C. C.

37

Short Form Order for Special Jury Panel.

COUNTY COURT,

COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK against GEORGE CORNELIUS MOORE, LESTER HAUGHTON, Defendants.	File Number 178—1947 Motion for: Special Panel Submitted 2/25/47 Present: HON. HARRY STACKELL *County Judge.*

38

	Papers Numbered
Notice of Motion and Affidavit Annexed	1
Answering Affidavit	2

Upon the foregoing papers this motion is granted. Submit order.

Dated, Feb. 25th, 1947.

H. S.,
J. C. C.

39

Filed Feb. 2, 1947
County Court Clerk's Office
Bronx Co.

40

Notice of Motion for Special Jury Panel.

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
41 Defendants.

PLEASE TAKE NOTICE, that upon the annexed affidavit of Samuel J. Foley, duly sworn to the 19th day of February 1947, upon the indictment against the defendants herein, George Cornelius Moore and Lester Haughton, filed in the office of the Clerk of the County of Bronx, upon the 11th day of February 1947, upon the pleas of not guilty entered thereto, and upon all the proceedings had herein, the undersigned will move this Court at a term thereof, to be held at the Bronx County Building, 851 Grand Concourse, in the Borough of Bronx of the City of New York, in
42 Trial Term Part I, on the 21st day of February 1947, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order that a special jury be drawn for the trial of the indictment herein, now pending in the County Court of the County of Bronx, against the defendants herein, and for such other and fur-

ther relief as to this Court may seem just and proper.

Dated: New York, Feb. 19, 1947.

Yours, etc.,

SAMUEL J. FOLEY,
District Attorney,
County of Bronx.

To:

JOHN F. WILKINSON, Esq.,
2488 Grand Concourse,
Bronx, New York City.

ISIDORE EHRMAN, Esq.,
291 Broadway,
New York City,

Attys. for George Cornelius Moore.

To:

HENRY McDONOUGH, Esq.,
215 East 149th Street,
Bronx, New York City.

I. SAUL FLEISCHMAN, Esq.,
160 Broadway,
New York City,

Attys. for defendant Lester Haughton.

46

Affidavit in Support of Motion for Special Jury Panel.

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
47 Defendants.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF BRONX, } ss.:

SAMUEL J. FOLEY, being duly sworn, deposes and says:

That he is the District Attorney of the County of Bronx, and is in charge of the prosecution of the above-named defendants, George Cornelius Moore and Lester Haughton.

That the said defendants were duly indicted by
48 the Grand Jury of the County of Bronx, at the February 1947 Term, of the County Court, of the County of Bronx, on the 11th day of February 1947, for the Crime of Murder in the First Degree, which said indictment was duly filed in the Office of the Clerk of the County of Bronx, on the said 11th day of February 1947.

That the said defendants pleaded not guilty to said indictment on the 19th day of February 1947. That the District Attorney herein intends to move the trial of the said defendants, upon said indictment, in this Court, on or about the 10th day of March 1947.

It is of utmost importance to the community that the innocence or guilt of the defendants be determined as speedily as possible.

As the Crime of Murder in the First Degree is punishable by death, it is usually difficult in the trial of such a case, to obtain, without considerable delay, ordinary jurors who do not possess conscientious opinions with regard to the death penalty.

The examination of persons selected as special jurors is of such a character as to insure the obtaining of a special jury without the usual delay that accompanies the selection of an ordinary jury in the trial of capital cases.

That the case herein is affected with a public interest in that, the deceased herein was a Detective of the Police Force of the City of New York, who was shot and killed in line of duty.

Deponent states that by reason of the aforesaid, an ordinary jury cannot be obtained without delay or difficulty to try the said defendants herein, upon the indictment aforesaid, and that by reason of said fact, the due, efficient and impartial administration of justice in this case would be advanced by the trial of this indictment by a special jury.

WHEREFORE, your deponent prays that an order be made directing that the issues of fact in the

52 *Affidavit in Support of Motion.*

said criminal action between the People of the State of New York and the said defendants, George Cornelius Moore and Lester Haughton, be tried before a special jury drawn and selected pursuant to the provisions of Article 18-B, Section 749aa of the Judiciary Law.

SAMUEL J. FOLEY.

Sworn to before me this
19th day of February 1947.

LORETTA C. TURNER
53 Loretta C. Turner
Notary Public
Bronx Co. Clk's No. 56, Reg. No. 17T8
Commission Expires March 30, 1948

54

55

Affidavit in Opposition to Motion for Special Jury Panel on Behalf of Defendant Moore.

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
Defendants.

56

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF BRONX, } ss.:

JOHN F. WILKINSON being duly sworn deposes and says:

That he is one of the attorneys appointed by the Court to defend the defendant, George C. Moore, and is associated with Isadore Ehrman, Esq., as defense counsel for the said defendant.

That the said defendant was indicted by the Grand Jury of the County of Bronx, at the February 1947 Term, of the County Court, of the County of Bronx, on the 11th day of February 1947, for the Crime of Murder in the First Degree, which said indictment was filed in the Office of the Clerk of the County of Bronx, on the said 11th day of February, 1947. 57

That the said defendant pleaded not guilty to said indictment on the 19th day of February, 1947.

58 *Affidavit in Opposition (Moore).*

That this affidavit is submitted in opposition to the motion made by the District Attorney in the County of Bronx, for a special panel of jurors to try this defendant upon the charge for which he is indicted. The affidavit submitted by the Assistant District Attorney in support of said motion does not contain any grounds wherein it may be stated that a special panel of jurors would be needed or necessary for the trial of this action, other than the fact that there may be delay in the selection of the jury by reason of the fact that some people have conscientious opinions with
59 reference to the death penalty.

The burden rests upon the District Attorney to establish the need for a special panel of jurors and not upon the defendant to disprove the need for said special panel.

The defendant on trial for the Crime of Murder in the First Degree is certainly entitled to any and all safeguards that the constitution surrounds a person against whom a crime is charged. He is entitled to a trial by a jury of his peers; that is a jury selected from the people in the ordinary walks of life.

There is nothing involved or intricate in this particular criminal action that would require a special juror possessed of any particular knowl-
60 edge in any particular field.

It is true that special panels of jurors known as "Blue Ribbon Juries" believe that they are chosen to assist in the prosecution of crimes; rather than sit as impartial, unbiased and fair judges of questions of facts. There is no need for special panels of jurors in any community or in any criminal action.

This defendant, as well as any defendant, is entitled to any and all presumptions of innocence which the law affords him. Your deponent feels that jurors in a special panel, who have previously sat as special jurors on similar type actions, will not have the same feeling for the defendant as the ordinary person found in our regular juries.

It is the conscientious opinion of your deponent that the defendant in this criminal action is entitled under the Constitution of the United States to a trial by jurors from the ordinary walk of life, and further that this particular action in no sense requires a special panel. 62

WHEREFORE, your deponent respectfully prays that this motion for an order directing that the issue of fact in this case be tried before a special panel jury be denied.

JOHN F. WILKINSON.

Sworn to before me this
25 day of February, 1947.

SELVIN WEISMAN
Selvin Weisman
Notary Public, State of New York
Residing in Bronx County
Bronx County Clerk No. 1 63
Commission Expires March 30, 1948

64

Affidavit in Opposition to Motion for Special Jury Panel on Behalf of Defendant Haughton.

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
65 Defendants.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

I, SAUL FLEISCHMAN, being duly sworn, deposes and says:

That Henry McDonough and he are the attorneys for the defendant Lester Haughton in the above entitled criminal proceeding and submit this affidavit in opposition to the motion of the District Attorney for an order that a special jury be
66 drawn for the trial of the indictment herein.

The defendant Lester Haughton is entitled to a jury representative of a fair cross-section of the people of Bronx County and the regular jury panels will furnish such a jury and to proceed for a special panel would be repugnant to a sense of fair play and a denial of equal justice before the law.

When the Honorable Herbert H. Lehman was governor of New York State, he stated in a message to the legislature, "I recommend that Blue Ribbon juries be abolished * * *. The use of special or so-called Blue Ribbon juries is not consonant with the preservation of the constitutional right to a trial by a jury of peers. It is at war with our basic conception of democratic society."

The Judicial Council, the members of which include eminent jurists and members of the bar in the State of New York, in its fifth annual report, page 42 of Reports of the Judicial Council, among other things, said, "The Council's report pointed out in addition, that the legal requisites prescribed for the special juries are substantially the same as the legal requisites prescribed for a general or ordinary jury. In consequence, as might have been expected, such a special juror inevitably feels superior and such a special jury system becomes distinctly un-American and not consonant with the trial by one's peers." 68

There is now pending before the Legislature of the State of New York, three bills to abolish Blue Ribbon juries (Senate #485 and Assembly #487 and #1179). These bills are being sponsored by the various bar associations of the State of New York, by eminent jurists, and by vigorous public demand. 69

The Court in its discretion should take cognizance of this attitude, prevalent for years towards Blue Ribbon juries, an attitude which is created and aroused by a sense that Blue Ribbon juries strike at the fundamental basis of our democratic ideals and principles.

70 *Affidavit in Opposition (Haughton).*

Further, the constitutionality of Blue Ribbon juries is now before the Supreme Court of the United States in the case of *Fay* v. *New York*, and *Bove* v. *New York*.

There is no reason why a fair trial cannot be had with jurists selected from the regular panel. The motion should therefore be denied.

I. Saul Fleischman.

Sworn to before me this
21st day of February, 1947.

71 Xavier C. Riccobono

Xavier C. Riccobono
Attorney & Counsellor-at-Law
P. O. Address 209 1st Ave.
New York City
Residing in N. Y. Co. No. 5, Reg. No. A-504-R-7
Cert. filed in Kings Co. No. 38, Reg. No. A-362-R-7
Commission expires March 30, 1947

72

73

Challenge to Panel of Special Jurors on Behalf of Defendant Moore.

COUNTY COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE, and LESTER HAUGHTON,
Defendants.

74

To the County Court of the County of Bronx:

The defendant George Cornelius Moore, hereby challenges the panel of jurors selected for the trial of the within indictment pursuant to the order of the Court dated, February 26th, 1947, upon the following grounds:

(1.) That the order of the Court dated February 26th, 1947, directing that the defendant, George Cornelius Moore, be tried before a special jury drawn and selected pursuant to Article 18-B, Section 749aa of the Judiciary Law, is unconstitutional in that it violates Section 1 and 2 of Article 1 of the Constitution of the State of New York and Section 1 of the 14th Amendment of the Constitution of the United States.

75

(2.) That qualified women jurors were improperly excluded from this special panel of jurors

76 *Challenge to Panel by Defendant Moore.*

in violation of Article 18-B, Section 749aa of the Judiciary Law of the State of New York, and in violation of Section 1 and 2 of Article 1 of the Constitution of the State of New York and Section 1 of the 14th Amendment of the Constitution of the United States.

(3.) That qualified negroes were improperly excluded from this special panel of jurors in violation of Article 18-B, Section 749aa of the Judiciary Law of the State of New York, the Civil Rights Law of the State of New York, and in violation of Section 1 and 2 of Article 1 of the
77 Constitution of the State of New York and Section 1 of the 14th Amendment of the Constitution of the United States.

Yours, etc.,

JOHN F. WILKINSON,
ISIDORE EHRMAN,
Attorneys for the Defendant
George Cornelius Moore,
Office & P. O. Address,
2488 Grand Concourse,
Bronx 58, New York.

78

79

Challenge to Panel of Special Jurors on Behalf of Defendant Haughton (re Violation of Constitutions of the State of New York and United States.)

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK against GEORGE CORNELIUS MOORE, LESTER HAUGHTON, Defendants.	CHALLENGE

80

The defendant, Lester Haughton, challenges the panel of special jurors on the ground that Section 749aa of the Judiciary Law is in violation of Sections 1 and 2 of Article 1 of the Constitution of the State of New York, and Section 1 of the 14th Amendment to the Constitution of the United States.

HENRY McDONOUGH and
I. SAUL FLEISCHMAN,
Attorneys for Defendant
Lester Haughton.

81

82

Challenge to Panel of Special Jurors on Behalf of Defendant Haughton (re Exclusion of Qualified Negroes).

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK against 83 GEORGE CORNELIUS MOORE, LESTER HAUGHTON, Defendants.	CHALLENGE

The defendant, Lester Haughton, challenges the panel of special jurors on the ground that qualified negro jurors were improperly excluded from the list of special jurors from which said jury panel was drawn, in violation of Section 749aa of the Judiciary Law, Article 1, Sections 1 and 2 of the Constitution of the State of New York and Section 1 of the 14th Amendment to the Constitution of the United States.

84

HENRY MCDONOUGH and
I. SAUL FLEISCHMAN,
Attorneys for Defendant
Lester Haughton.

85

Challenge to Panel of Special Jurors on Behalf of Defendant Haughton (re Exclusion of Qualified Women).

COUNTY COURT,

HELD IN AND FOR THE COUNTY OF BRONX.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
Defendants.

CHALLENGE

86

The defendant, Lester Haughton, challenges the panel of special jurors on the ground that qualified women jurors were improperly excluded from the list of special jurors from which said jury panel was drawn, in violation of Sections 749aa of the Judiciary Law, Article 1, Sections 1 and 2 of the Constitution of the State of New York and Section 1 of the 14th Amendment to the Constitution of the United States.

HENRY MCDONOUGH and
I. SAUL FLEISCHMAN,
Attorneys for Defendant
Lester Haughton.

87

88 **Extract from Minutes re Defendant Moore.**

At a Trial Term, Part 2, of the County Court of the State of New York, holden in and for the County of Bronx, in the First Judicial District of said State, for the trial of criminal actions, at the County Court House in said County, on the 20th day of March, 1947.

Present: Hon. James M. Barrett,
County Judge Bronx County.

89 The People of the State of New York
against
George Cornelius Moore,
Defendant.

George Cornelius Moore, in due form of law, is arraigned at the bar upon the indictment of murder in the first degree of one James M. Burke, and having heard the indictment read, and being asked whether he demanded a trial thereon, answered that he does demand a trial, and says that he is not guilty thereof;

90 Whereupon, the following jury is ballotted and sworn, to well and truly try and a true verdict give according to the evidence, viz.:

1. Edward J. Engel
2. Charles F. Davis
3. Walter H. Evers
4. Eugene J. Gall
5. John Lorraine Stewart
6. John P. O'Connell
7. Maxwell S. Symon
8. Albert Seltenreich
9. John Peat
10. Clarence W. Gray
11. Charles Thomson
12. Joseph C. Luke

who, upon their oath, do say that the said George Cornelius Moore is guilty of the crime of murder in the first degree as by the indictment as alleged against him.

Counsel for the defendant moves to set aside the verdict and for a new trial upon various grounds, which motions, after due deliberations, are severally in all things denied.

COURT MEETS

April 14th, 1947 92

Present: Hon. James M. Barrett,
County Judge Bronx County.

The defendant, George Cornelius Moore, is arraigned at the bar.

The District Attorney moves for judgment against the defendant.

Counsel for the defendant moves to set aside the verdict and for a new trial and in arrest of judgment upon various grounds, and

After hearing counsel thereon, and after due deliberation the court denies said motions in all things.

93

It is thereupon demanded of the said George Cornelius Moore what he hath to say why judgment should not be pronounced against him according to law, who nothing further saith, unless as before he had said.

Whereupon, it is Considered, Ordered and Adjudged by the Court, that the said George

94 *Extract from Minutes re Defendant Moore.*

Cornelius Moore for the murder in the first degree and felony aforesaid, whereof he is convicted as aforesaid, be and he hereby is sentenced to the punishment of death, and it is

ORDERED, that within ten (10) days after this day's session of the court, the Commissioner of Correction of the City of New York deliver the said George Cornelius Moore, together with the warrant of this Court to the agent and warden of the State Prison of the State of New York at Sing Sing, where the said defendant shall be kept in solitary confinement until the week beginning
95 Monday, May 26th, 1947, and upon some day within the week so appointed the said agent and warden of the State Prison of the State of New York, at Sing Sing, is commanded to do execution upon the said defendant in the mode and manner prescribed by the laws of the State of New York.

(A true extract of the minutes)

MICHAEL B. MCHUGH,
Clerk of the Court.

[SEAL]

96

97

Extract from Minutes re Defendant Haughton.

At a Trial Term, Part 2, of the County Court of the State of New York, holden in and for the County of Bronx, in the First Judicial District of said State, for the trial of criminal actions, at the County Court House in said County, on the 20th day of March, 1947.

Present: Hon. James M. Barrett,
County Judge Bronx County.

98

The People of the State of New York

against

Lester Haughton,
Defendant.

Lester Haughton, in due form of law, is arraigned at the bar upon the indictment of murder in the first degree of one James M. Burke, and having heard the indictment read, and being asked whether he demanded a trial thereon, answered that he does demand a trial, and says that he is not guilty thereof;

99

Whereupon, the following jury is ballotted and sworn, to well and truly try and a true verdict give according to the evidence, viz.:

1. Edward J. Engel
2. Charles F. Davis
3. Walter H. Evers
4. Eugene J. Gall
5. John Lorraine Stewart
6. John P. O'Connell
7. Maxwell S. Symon
8. Albert Seltenreich
9. John Peat
10. Clarence W. Gray
11. Charles Thomson
12. Joseph C. Luke

100 *Extract from Minutes re Defendant Haughton.*

who, upon their oath, do say that the said Lester Haughton is guilty of the crime of murder in the first degree as by the indictment as alleged against him.

Counsel for the defendant moves to set aside the verdict and for a new trial upon various grounds, which motions, after due deliberations, are severally in all things denied.

COURT MEETS

101 April 14th, 1947

Present: Hon. James M. Barrett,
County Judge Bronx County.

The defendant, Lester Haughton, is arraigned at the bar.

The District Attorney moves for judgment against the defendant.

Counsel for the defendant moves to set aside the verdict and for a new trial and in arrest of judgment upon various grounds, and

After hearing counsel thereon, and after due deliberation the court denies said motions in all things.

102

It is thereupon demanded of the said Lester Haughton what he hath to say why judgment should not be pronounced against him according to law, who nothing further saith, unless as before he had said.

Whereupon, it is Considered, Ordered and Adjudged by the Court, that the said Lester

Haughton for the murder in the first degree and felony aforesaid, whereof he is convicted as aforesaid, be and he hereby is sentenced to the punishment of death, and it is

ORDERED, that within ten (10) days after this day's session the court, the Commissioner of Correction of the City of New York deliver the said Lester Haughton, together with the warrant of this Court to the agent and warden of the State Prison of the State of New York at Sing Sing, where the said defendant shall be kept in solitary confinement until the week beginning Monday, May 26th, 1947, and upon some day within the 104
week so appointed the said agent and warden of the State Prison of the State of New York, at Sing Sing, is commanded to do execution upon the said defendant in the mode and manner prescribed by the laws of the State of New York.

(A true extract of the minutes)

MICHAEL B. MCHUGH,
Clerk of the Court.

[SEAL]

105

106

Testimony.

COUNTY COURT,

BRONX COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK against GEORGE C. MOORE and LESTER HAUGHTON, Defendants.	Ind. #178/1947.

107

(On indictment for Murder—1st Degree.)

New York, March 20, 1947.

Before: HON. JAMES M. BARRETT,
County Judge and a Jury.

APPEARANCES:

For the People:

SAMUEL J. FOLEY, Esq., District Attorney, Bronx County, and NICHOLAS F. DELAGI, Esq., Assistant District Attorney.

108

For Defendant Moore:

JOHN F. WILKINSON, Esq., and ISIDORE EHRMAN, Esq.

For Defendant Haughton:

I. SAUL FLEISCHMAN, Esq., and HENRY F. McDONOUGH, Esq.

Howard J. Kelley, Irving Netzer and
Charles J. DeSantis,
Official Court Reporters.

The Court: There has just been submitted to me within the past 10 or 15 minutes a challenge on behalf of the defendant George Cornelius Moore and the defendant Lester Haughton as to the sufficiency of the panel that has been called to try this case. That is under Section 363 of the Code of Criminal Procedure. (A copy of this challenge was not served on the District Attorney until after the Court received the challenge 110
this morning.)

Now, does the District Attorney challenge the sufficiency of the facts alleged as a ground for challenge? Do you deny the sufficiency of the challenge?

Mr. Foley: Yes, sir, we do.

The Court: Under the circumstances, then, we will have to proceed to try the issue today, and it would be advisable to excuse the jurors until tomorrow morning, because it will probably take a good part of the day to get ready. Now, I think for their convenience we will adjourn until tomorrow morning. Is there any objection?

Mr. Wilkinson: There is no objection by the 111
defendant Moore.

Mr. Fleischman: No objection by the defendant Haughton.

Your Honor, we want to note our exception on the record to the denial by the District Attorney.

Mr. Wilkinson: And exception on the record for the defendant Moore.

112 *Proceedings.*

The Court: We will proceed to try the issue. All jurors are excused until tomorrow morning at ten minutes to ten.

All right, gentlemen, it is up to you to proceed.

Mr. Wilkinson: In that event, sir, we would like to have the Court's permission to direct that the County Clerk be forthwith ordered to appear before the Court together with the files.

The Court: I don't know whether he is available.

Mr. Wilkinson: Well, a deputy, sir, will do, together with their records that they have
113 amassed under Section 749aa, Article 18b of the Judiciary Law.

The Court: That will take some time, now. I will take a recess at this time in order that we might get these various men. Whom else do you want to call?

Mr. Wilkinson: We want to call the County Clerk or the deputy in charge of the panels, together with the records.

The Court: Do you want the County Clerk in person?

Mr. Wilkinson: Or a deputy who would have charge of the panels, together with their records.

The Court: Whom else?

114 Mr. Wilkinson: That will be sufficient.

The Court: Just the County Clerk deputy and his records?

Mr Wilkinson: Yes, sir.

The Court: The Court will do that.

Mr. Fleischman: If your Honor pleases, we would like those challenges marked for identification for the record.

The Court: They are filed with the Court.

Mr. Fleischman: And are they made part of the record of this proceeding?

The Court: They will be filed with the record in this case.

So there will be no mistake about it, I had three separate papers submitted on behalf of Lester Haughton and one paper on behalf of George Cornelius Moore.

It is understood, gentlemen, the allegations in the three papers are the same as the allegation in the one paper.

Mr. Wilkinson: I understand so; yes, sir.

The Court: They have asked for the production of the County Clerk or a deputy and his records, so we will take a recess until we get those men here. 116

Mr. Foley: Shall I undertake to have them here?

The Court: Yes.

(After Short Recess.)

The Court: Are you ready, gentlemen?

Mr. Wilkinson: Defendant Moore is ready.

Mr. Fleischman: Defendant Haughton is ready.

The Court: You made certain requests of me before. Have you had ample opportunity to look at the records you have asked to be produced? 117

Mr. Wilkinson: Yes, sir.

The Court: Are both sides ready to proceed?

Mr. Wilkinson: Yes, sir.

The Court: I understand the inquiry now is to be directed to the intentional elimination or disqualification of women and Negroes on the special jury panel.

Mr. Wilkinson: That is correct.

The Court: All right; proceed.

Mr. Fleischman: Intentional or improper elimination.

The Court: Swear the County Clerk.

MICHAEL B. McHUGH, County Clerk, Bronx County, being first duly sworn, testified as follows:

By Mr. Wilkinson.

119 Q. Now, Judge McHugh, in your capacity as County Clerk of the County of Bronx, do you in your office have charge of the compiling of a list of special jurors? A. We do.

Q. You compile that list pursuant to the Judiciary Law of the State of New York? A. We do.

Q. And more specifically Section 749aa of that law, is that correct? A. Yes, sir.

Q. The list of special jurors that is compiled in your office, is that taken from a general list of jurors for this county? A. Yes.

Q. These lists, are they compiled by subordinates of yours in the County Clerk's office? A. All work in the County Clerk's office is done by
120 subordinates.

Q. So that the records and everything are compiled by others under your supervision? A. Yes, sir.

Q. They are not personally compiled by you? A. No, sir.

Mr. Wilkinson: No further questions.

Mr. Fleischman: That's all.

Mr. Foley: Judge, I would like to ask a question, please.

By Mr. Foley.

Q. Who is it in your office that is designated by you to compile this list of special jurors? A. The jurors office is in charge of a deputy, John J. Hanley, and under him is the secretary of the office, William Fischer.

Q. And he is the subordinate who actually does the work? A. Fischer is in charge of the actual clerical end of the work under the direction of 122
Mr. Hanley.

Mr. Foley: Thank you.
(Witness excused.)

WILLIAM F. FISCHER, 888 Faile Street, Bronx, New York, being first duly sworn, testified as follows:

By Mr. Wilkinson.

Q. Mr. Fischer, where are you employed? A. Division of Jurors office, County Clerk, Bronx. 123

Q. In that capacity do you have charge of compiling the list of special jurors? A. I supervise it; yes, sir.

Q. Will you tell us how the list of special jurors is compiled? A. Well, under the law it is required that we have a list of 800 special jurors, and we select or make up that list from jurors that are on our present list. When they come in

for examination and so forth, we make up our list from that. Then when there are vacancies we send for the regular jurors on the list and we examine them. If they meet with the requirements we place them on the list.

Q. What are the requirements according to your office of a special juror? A. That they not be opposed to capital punishment.

Q. Is that the only requirement? A. That's the only one. There are some other questions on the questionnaire, and with the approval of the applicant we place them on the special juror list.

125 Q. For the special jurors is there a separate application that is signed by them, or is it the same application for a trial juror? A. It is a separate application.

Q. Do you have a copy of that? A. I have. This is it (handing same to counsel).

Mr. Wilkinson: I will offer that copy in evidence.

Mr. Foley: No objection.

(Same received in evidence and marked Defendants' Exhibit 1 of this date.)

Q. Now, with reference to the trial jurors in Bronx County, is there a different application

126 that is used for those jurors? A. There is, sir.

Q. Do you have one with you? A. I have. There is one form for men and one form for women (handing same to counsel).

Mr. Wilkinson: I will offer these forms in evidence separately.

Mr. Foley: No objection.

(Same received and marked Defendants' Exhibits 2 and 3 respectively of this date.)

Q. Now, Mr. Fischer, if a person appears at your office and applies for special jury duty, may they make an application to serve as special jurors? A. If they are not on our list, sir, they have to fill out a qualifying blank, which is the white one if it is a male. If they meet with the requirements, then we put them on the special juror list, but he would have to be sworn in as a juror first.

Q. The only thing you are interested in when you accept him as a special juror is that he be not against capital punishment? A. Free of that; yes, sir.

128

Q. How many special jurors are there in the County of Bronx? A. We have approximately 784 or 783.

Q. Will your records indicate how many of the 784 are Negroes? A. No, sir. There is no way of determining that. A juror is a juror, white or black, race or creed, man or woman.

Q. Will your records indicate how many of those are Negroes? A. No, sir.

Q. Will your records indicate how many of the approximately 780 are women? A. Well, if you looked over the names you could get that; yes, sir.

Q. Do you keep a card index? A. We do, sir.

Q. Do you put down the sex of the person on 129
the card index? A. Only their name.

Q. Do you put down the color of the person? A. We do not.

Q. Are you or an associate of yours the only one that determines whether a person shall become a special juror or not? A. Well, Mr. Hanley as the deputy, when the requirements are met.

As secretary. I sign it. Then it is required of Mr. Hanley, the deputy, to sign it when he looks them over and checks on it.

Q. Does he interview them personally? A. Sometimes he does; yes.

Q. Who strikes out the names from the special jurors list? A. It is an office routine, an office mechanics. If a person moves from the county it is stricken off. If a person is deceased it is stricken off.

Q. Do you keep the same names on the special juror panel from year to year? A. We do.

131 Q. And do you keep a record of their service? A. We do.

Q. And do you keep a record of their convictions? A. No, sir; that's something we wouldn't know.

By Mr. Fleischman.

Q. Mr. Fischer, of your own knowledge, you cannot then definitely state whether or not there are any Negro jurors on the special panel? A. Well, we know there are.

Q. When you say you know there are, do you know that from your records? A. Yes, sir; from examining them personally.

132 Q. How many would you say there are on the special list? A. I couldn't even give you an estimate, because there are so many of them that come in. I couldn't tell you truthfully.

Q. You mean there are so many people that come into your office? A. No; colored people that we examine.

Q. And how many have you accepted? A. We couldn't tell you that. There is no way of telling.

Q. One, two, five, ten; can you give us an approximate idea? A. I couldn't tell you. Maybe two dozen; maybe three dozen.

Q. Maybe only five? A. Oh, no; that would be too small an amount. I should say from 1946 on I must have examined at least 500 myself.

Q. And how many of those 500 did you accept? A. That is, for regular jury work.

Q. I am concerned now, Mr. Fischer, with just the special list. A. Oh, I would say I examined maybe about a hundred, and of those maybe, well, not to pin me down, maybe a dozen.

Q. How many women would you say there are 134
on that special list of jurors? A. I couldn't be exact, but I would say possibly 50. I wouldn't know exactly. Maybe there's 30; maybe there's 40, but there's quite a few names. If you check up on them you will see them.

Q. Do you know how many names of Negro jurors were in the drum when this special panel was drawn? A. No, I do not. There is no way of determining that.

Q. Do you know if any were in the drum? A. I couldn't tell you.

Mr. Fleischman: That's all.

By Mr. Foley. 135

Q. How many names do you put in the drum, Mr. Fischer, when you draw a special panel? A. Why, there was one panel out, sir, and there were 600 and some odd left when this panel of 150 was drawn.

Q. Did you put into the drum all of the jurors who had not been drawn previously for service on the special panel? A. Correct, sir.

136 *William F. Fischer—Re Special Jurors.*

Q. And however many Negroes or women there are on the special panel their names were in the drum? A. Correct.

Q. Were you present when the drawing was had? A. I was.

Q. Was that on the third day of March, 1947? A. It was.

Q. Are you aware of any deliberate intent to exclude Negroes or women from service on the special panel? A. No, sir.

Q. Was the drawing supervised as required by law by a justice of the Supreme Court? A. It
137 was, sir.

Q. And were the defendants represented by counsel there? A. Not all four, but I believe there were two.

Q. Was any objection raised to the method of drawing? A. It was not, sir.

Mr. Foley: That's all.

By Mr. Wilkinson.

Q. Mr. Fischer, in the selection of jurors do you have regard to the population of the county? A. Population of the county?

Mr. Foley: May I interrupt and ask is
138 counsel referring now to the general panel of jurors or to the special panel?

Mr. Wilkinson: Special panel.

A. Not necessarily.

Q. Do you or your office fix the number of women that shall serve as special jurors? A. No, sir.

Q. Do you fix the number of men that shall serve as special jurors? A. Only the total amount of jurors of 800 shall be on that list, whether they be men or women jurors.

Q. Does your office recognize the colored population in this county with respect to the representation upon the jury? A. Well, in getting up the list from telephone books, voting records or whatever source we may use, we couldn't tell whether they be colored or white, outside of the names.

Q. Mr. Fischer, you know, do you not, that certain sections of the county are commonly known 140
as colored sections where the colored population is thick and heavy? A. That's right.

Q. Does your office concentrate when looking for jurors on those sections, or does your office shy away from those sections? A. No. Only a short time ago—I guess about eight months ago—it so happened that in one of the election assembly districts which embodied quite a number of colored people, I would say that there were 400 that responded to the notices that we sent out.

Q. Was that 400 accepted for special jury duty? A. No, sir.

Q. In questioning for special jurors, has your office concentrated on the colored sections? A. No, sir. 141

Q. Have them concentrated on other sections other than the colored? A. No, sir; in general.

Q. Now, you have stated it is the practice of your office that you often go so far as to look up the telephone book? A. That's right.

Q. That is, in search of jurors? A. Correct.

Q. Some of those that you would get from the telephone book, would they become special jurors?

A. Well, if they meet with the requirements. Of course, that's quite a broad question. I couldn't say for sure.

Mr. Wilkinson: No further questions.

Mr. Fleischman: That's all, your Honor.

(Witness excused.)

Mr. Wilkinson: That's all the evidence that the defendant Moore is submitting on the challenge.

Mr. Fleischman: That's all the defendant Lester Haughton is submitting on the challenge, your Honor.

143

Mr. Wilkinson: On the basis of the foregoing evidence the defendant Moore moves to sustain the challenge and to dismiss the panel.

Mr. Fleischman: The same thing for Lester Haughton.

The Court: Motion denied. Challenge disallowed.

Mr. Wilkinson: I take exception to the Court's finding.

Mr. Fleischman: I take exception in behalf of Lester Haughton.

The Court: Is that all, gentlemen? You have had everything you want now?

144

Mr. Fleischman: That's all.

Mr. Wilkinson: That's all, sir.

The Court: All right. We will proceed tomorrow morning at ten o'clock. The case is adjourned until ten o'clock tomorrow morning.

New York, March 21, 1947.

(TRIAL CONTINUED.)

Appearances: As noted on title page.

The Court: Proceed. You are allowed 30 peremptory challenges. I will pick two alternate jurors in this case.

Mr. Fleischman: At this time I would like the Court to take judicial notice of the fact that there are no colored jurors on the Special Panel of 150 jurors.

The Court: The Court will take notice of it. It is apparent that there are no negro jurors present at this time. 146

Mr. Wilkinson: I make the same request on behalf of the defendant, Moore.

The Court: Proceed.

(The examination of prospective jurors was proceeded with and at 1 P. M. six jurors were selected and sworn.)

The Court: You are admonished not to discuss the case among yourselves at any time during the trial. You are not to form any opinion as to the guilt or innocence of the defendants until the case is submitted to you. If I overlook the admonition at any time, consider it as having been said to you. Step upstairs and wait for the attendants to call for you. Recess until 2:15 P. M. Defendants remanded. 147

148 *Proceedings.*

(After Luncheon Recess.)

(The examination of prospective jurors was proceeded with and at 6:15 P. M. twelve jurors and two alternates were selected and sworn.)

The Court: Mr. Foreman and Gentlemen of the Jury, you are admonished by the Court not to discuss this case among yourselves at any time during the trial. Do not discuss it at home with members of your family or any friends or acquaintances. Do not at any time visit the scene of the alleged crime. Keep your minds open for evidence throughout the case. Form no opinion
149 as to the guilt or innocence of these defendants until I submit the case to you. You are excused now until Monday morning. It would be best to come about half-past ten. You need not get here Monday morning until ten thirty. That will be time enough on Monday morning. I may have something else to do before that. Ten thirty in the room you were in today. You are excused until that time. Defendants remanded.

New York, March 24, 1947.

150 (Trial Continued.)

Before: Hon. James M. Barrett, County Judge and a Jury.

Appearances: The same as heretofore noted.

Mr. Wilkinson: May I respectfully move at this time, if the Court pleases, to have a daily copy of the minutes furnished to defense counsel?

The Court: Application granted. So ordered. Furnish them to the attorneys for both defendants.

Mr. Fleischman: At this time I would like to move that all witnesses be excluded from the court-room.

The Court: Make that announcement.

The Clerk of the Court: All witnesses on both sides in the case of the People of the State of New York against George C. Moore and Lester Haughton are excluded from the court-room. They must remain outside until called to testify, and after testifying they may remain in the court-room. 152

The Court: Look around, gentlemen, and make sure that your witnesses are out. Proceed with your opening, Mr. Foley.

Mr. Foley: If it please, Your Honor, Mr. Foreman and Gentlemen of the Jury: The People of the State of New York, by indictment No. 178 of 1947, charge these defendants at the bar, George Cornelius Moore and Lester Haughton, with the crime of murder in the first degree.

The deceased in this case was a police officer, Detective James M. Burke, who, on a regular assignment of duty, was detailed to a liquor store at 1439 Webster Avenue in the County of Bronx. The proprietor of that store is a man named Shaw. 153

Burke reported there for duty in the evening of the 13th of December, 1946, and, while he was in the place, these two defendants, Moore armed with a 45-calibre automatic pistol, and Haughton, entered the place for the purpose of holding up the proprietor. It was not a place which was picked out by chance in their wandering about.

154 *Opening for People.*

It had been spotted or cased, or whatever expression might best fit these things. It had been looked over and prospected by the defendant Haughton, who had master-minded this thing for some time before the actual stick-up.

It was discussed in Harlem, and, on one occasion, about a week prior to the actual stick-up, Haughton came into the Bronx with a man who will be produced here as a witness, one Adolph Clark, and, amongst other things that were done here that day, they walked past Ray's store as it is known, Mr. Shaw's store on Webster Avenue,
155 looked it over and discussed it.

Later in Harlem, either that day or the day immediately following, there was a discussion in which several men participated, amongst them this man Clark and both of these defendants.

On the 13th of December these men were in a store in Harlem, and at five o'clock, when certain ideas they had in mind produced no money for the day when the news was posted that they were not going to collect on anything, they discussed going to the Bronx to take over this particular liquor store.

Moore left them and went and got the 45, and returned to that store. Whereupon, Clark, Haughton and Moore set out for the Bronx. As
156 they crossed 135th Street and approached the subway entrance, a discussion arose amongst them, and Clark was ruled out of the party. There are different reasons assigned for that. One is that they were going to visit some girls in the Bronx and their being with two girls they did not want him. Another is that they were short of carfare, or he didn't have any. I don't know what is the truth. We will put in the evidence as I have assembled it.

However, he did not come up with them, but they did come up. They left the subway and they proceeded over to a point where, that is, unknown to them, they went down some steps and came out on Webster Avenue. They entered the store and Moore accosted Mr. Shaw. They both entered, and he said to him, "This is a stick-up," or "Get in the back." The evidence will vary as according to who testifies to you, and he did not move for a minute or so, or a second or so. 157

Whereupon, Moore either took out or then brought to his attention the forty-five. Whereupon, the complainant, Mr. Shaw, the citizen, proceeded to raise his hands, and Moore said to him, "Keep your hands down. Get in the back." He preceded Moore towards the rear where, from behind piled-up liquor cases that Burke had set there, Burke emerged, and again there will be same confusion as to the actual details. 158

Whether there was a grappling between Burke and Moore or Burke and Haughton, and whether the firing at once commenced will develop to your satisfaction and be left to your judgment from such evidence as you hear, but in any event Burke did empty his gun, a six-chambered regulation police thirty-eight, at these defendants from another direction, hitting Moore in the arm and inflicting a wound which penetrated apparently at the forearm and made its exit in the upper arm. 159

Whether Haughton was wounded or not, we do not know, including Haughton. There was an abrasion, not on his eyebrow but on his eyelid under the eyebrow, which might have been caused by a bullet or by flying glass, as bottles were

broken on the shelves during the fusillade; but Moore with his automatic from the floor reaching around the low barricade of cases in front of the high barricade—there was a high one which concealed Burke from anyone entering the store, and a lower one behind which he either knelt or fell as he emptied his gun—Moore on the floor from in front of that and reaching around and over the two cases emptied seven .45 automatics, at least five of which penetrated Burke's body.

The empty shells as they were ejected from the
161 automatic have been recovered; so have all of the seven bullets, one of them from within Burke's body. The Medical Examiner will tell you of its point of entrance and its course as it proceeded through his body and his recovery of it, and that, too, was turned over to Sergeant Butts, the ballistics man.

All of these shells which were ejected, and all of the bullets, were recovered, including the one copper-cased or copper-jacketed .45, the core of which had split—that, too, can be assembled and it can be demonstrated—and we will offer the proof of it that all of these seven bullets and seven shells were fired from that gun.

When these men ran from the place they ran
162 through streets which were unknown to them, and at some time, either in the school-yard, that is, south and east of the place of business of Mr. Shaw, or at the crossing over the railroad bridge, Moore, who had been hit, gave the gun to Clark —not to Clark—to the other defendant, Haughton. Clark had stayed in Harlem.

Moore proceeded alone to Harlem, where he sent word to Clark, the man who was to have

come up with them, and Clark visited Haughton in his room. I am sorry, Moore, the wounded man. Clark went to Moore's room, as a result of a message Moore had sent to him, and found him there with his wound, where Moore told him the thing had gotten messed up and he thought he had killed a man.

At Moore's request, Clark went and procured drugs with which to dress the wound. There was a discussion about reporting it to a doctor or going to a hospital, and after their discussion Clark went and procured some drugs that he had, and went to a man named Joe Baltimore Brown 164
to borrow some money, and Brown accompanied him to a drug store where they bought some bandage, and I think peroxide, and together they went to Moore's room where Moore told Brown what had happened.

Later that night, I don't know just when, the other defendant, Haughton, showed up downtown with the gun, and he, too, went to this same Adolph Clark and turned the gun over to him. The exact conversation will be related through witnesses, but substantially it was, "Take the thing and get rid of it; it is hot; a man was killed with it."

Clark took the gun, and he put it in his room and kept it there. In the meantime he had, at 165
Moore's request, taken from Moore's home or his room the overcoat, the suit coat and the shirt which Moore had worn during the stick-up, and, rolling them all in the overcoat, he put them in his own room.

Subsequently, in company with another man, he wrapped these in a bundle, a paper bundle and tied it, and took them down to a basement where

there was a furnace fire, and together there these two men opened the package, inspected the garments and destroyed them.

Either the day after the shooting, which would be Saturday, or perhaps on Sunday, a man referred to by the witnesses as Mack, whose right name is Otis Banks, came to Clark and asked him where was Moore. Clark directed him to Moore's home. A conversation was had there between Moore and Banks. Banks was the owner of that gun.

At first Moore told him he destroyed it, or
167 rather that he had thrown it away. He asked him why he wanted it; it was hot. By that time both Moore and Banks had read the papers. The man that Moore thought he might have killed was then known to them to be a detective, and Moore said to him, "Why do you want that gun? It is hot. If you get in a fight and they pick you up with it the detectives in ballistics can tell that that is the gun that killed that detective."

Banks told him he had a brother-in-law from Philadelphia visiting him, that he was going back to Philadelphia with it, and that he would take the gun and it would be out of the state and that would the end of it. Whereupon, Moore, the man who did the shooting, said to the owner of
168 the gun, Banks, "Go down and find Adolph Clark. He has got it. Tell him I said to give it to you, and he will."

He did approach Clark, and, when Clark heard the message, he said, "O.K. If Moore said give it to you, come and get it." He then took it to his own home, this man Banks, and he kept it hidden in his apartment until some time after the first of the year, probably between the first and

the seventh of January some time, when, being short of funds, he put it up as collateral for a loan with another man named Askew. He got $30.00 on it, and, when our investigation was culminating and we went back through the successive witnesses that appeared in this chain of evidence that I relate to you, we did go down on February 7th, or the early morning of February 8th, and with Otis Banks, the owner of the gun, proceeded to the home of Askew where the gun was turned over to the police, and in the course of time went to the ballistics expert.

Moore was the first of these defendants to come 170
to our office, and there, after questioning, he made a full statement of his participation in this crime, a complete and voluntary statement, that is, complete in its two parts. The first part admitted his participation and stated that he did not have a gun and he did not fire any shots.

When the stenographer returned with the transcribed record of the questions asked of him and the answers made by him, he read it over, page by page, made corrections at his will in pen and ink, initialed those corrections that he had made, and he did make some deletions, none very substantial, but some.

He sat there in the room in which he had been
interrogated, the room of the Chief Assistant, Mr. 171
Ryan, and in conversation with those who were in there observing this, he did state to the complainant, Mr. Shaw, "I knew you as soon as I came in, and when I saw you I turned my hat up and I opened my eyes very wide, so that you might have trouble in picking me out. It is very lucky that you were so quick that night, because I would

have grabbed you and probably used you as a shield and you might have been killed."

After further conversation he said he wanted to amend his original statement, and, when asked in what respect, he said, "I want to admit that I did the shooting." His exact words I cannot recall. They will be testified to. In effect, "I want to get it all off my chest."

A stenographer was sent for, and a second statement was taken, in which he said he did the shooting; the other man did not have a gun, and he may have supplemented some of the details
173 as to his flight and disposition of his clothes and disposition of the gun given in the first statement. I am not quite clear.

He refused to divulege the name of the second man, and said he preferred not to. He had made his own conscience clear. He did not want to involve anybody else, but we showed him a picture and asked him whether that was the Ray he was talking about. We never knew of Lester Haughton, and he said, "Yes, that was Ray."

"Will you write your name on the back of this picture?"

"No, I would rather not. You know him. It is all up, but I do not want to do anything to hurt him."

174 Later that night, or perhaps in the morning—I do not know at what time; I should say around two o'clock maybe—Haughton came in, and we talked to Haughton for some time. I do not know how long. He at first denied any participation in it. We brought in Moore, who walked over to where Haughton sat, and he put his hand on his shoulder and said, "You might as well tell them. They know all about it. The jig is up. I have told the whole truth, and I honestly feel much better."

Haughton gradually admitted that part of it was true and that these various witnesses, whose accumulated testimony was laid before him, were not all lying, and presently he gave us the statement which we have here, and in that statement he tells of how he picked the place out. He thought it was run by an old man and his son; that it would be an easy place to take; that he was in Harlem with Adolph Clark and this defendant George Moore, when they determined to go up and take the place.

He gives his reason for the exclusion of Clark from the party, and then he tells in detail what 176
did happen up here, and how he got to Harlem and turned the gun over to Clark.

Now, that is the outline of the People's case. There will be greater detail, naturally, of conversations and incidents that are an essential part of this picture, but are not necessary for me to comment on at present.

This is what is known in the case as the People's opening. It is a statement of the facts upon which the indictment is based. It is an outline of the proof which I will adduce here at this trial, and it constitutes the framework of that state of facts and that sum of legal evidence upon which, at the conclusion of the trial, I shall ask you to convict both of these defendants of murder in the first 177
degree.

Mr. Wilkinson: As to the defendant George Moore, the defendant waives the opening at this time.

Mr. Fleischman: The defendant Lester Haughton waives his opening at this time, Your Honor.

The Court: The defendants waive opening. Proceed.

The Court: The first witness.

178 *William M. Burke —For People—Direct.*
Grant E. Evans, M.D.—For People—Direct.

WILLIAM M. BURKE, called as a witness by the People, being duly sworn, giving his address as No. 2215 Hunter Avenue, Bronx, testified as follows:

Direct examination by Mr. Foley.

Q. Mr. Burke, was detective James M. Burke, a New York City police officer, your brother? A. Yes.

Q. Did you on the 14th day of December, 1946, go to Fordham Morgue? A. Yes.

179 Q. Did you see his body there? A. Yes.

Q. Did you identify it to Assistant Medical Examiner, Dr. Hochman? A. Yes, sir.

Mr. Foley: Thank you. That is all.
Mr. Wilkinson: No questions.
Mr. Fleischman: No questions.
The Court: The next witness.

GRANT E. EVANS, M.D., called as a witness by the People, being duly sworn, giving his address as Fordham Hospital, testified as follows:

180 *Direct examination by Mr. Foley.*

Q. Doctor, are you a graduate of a medical school? A. Yes.

Q. What University? A. University of Utah.

The Court: Keep your voice up, doctor; these gentlemen have to hear you.

Q. The University of Utah? A. Yes.

Q. What year did you graduate? A. 1946.

Q. Are you presently stationed at Fordham Hospital? A. Yes.

Q. In what capacity? A. As an interne.

Q. On December 13th, 1946, were you riding an ambulance? A. Yes.

Q. Did you respond to a call that evening or day? A. I did.

Q. To 1439 Webster Avenue? A. Yes.

Q. Can you fix the approximate time you arrived there? A. Between 6:15 and 6:20, about.

Q. When you arrived at the scene, what did you see and do? A. When I arrived there, I was ushered into the liquor store by a policeman. Detective Burke was slumped over some cases of liquor. There was a considerable amount of blood. 182

Q. Let me interrupt you. Where were those cases in the store, in the front or center or rear of the store? A. Just to the front of a partition between the back and front of the store.

Q. Where were they with respect to the counters and shelves on which the bottles were? A. Well, I would have to almost describe it.

Q. Yes, you may. A. There were several cases in back, packed up. I guess it was their excess supply. They had some near the front part, about four cases. 183

Q. When you say "the front part," do you mean the front part of the rear part of the store? A. Yes.

Q. Go on. A. He was slumped over two of these cases. Next we put him on his back to examine him. There was no pulse, no blood pressure, no respiration or heart beat. He was pronounced dead on arrival.

Q. When you say he was slumped over the cases, in which direction was he facing, or rather, was his head facing toward the front or rear? A. Toward the front of the store.

Q. I show you a photograph and ask you whether or not this is an accurate representation of substantially what you saw as you entered that place on December 13th, 1946; I mean with respect to the cases and their location in the store? A. Yes, sir.

Mr. Foley: I would like to have it marked for identification.

185 The Court: All right.

Mr. Foley: Looking toward the rear.

(Same marked People's Ex. A for identification of this date.)

Q. Doctor, after pronouncing the officer "DOA," dead on arrival, did you make any detailed examination of him, or did you confine your examination to determining whether or not he was alive or dead? A. I just determined whether he was alive or dead.

Mr. Foley: Thank you. Your witness.

Mr. Wilkinson: No questions.

186 Mr. Fleischman: No questions.

The Court: The next witness.

SERGEANT CHARLES A. HESS, called as a witness by the People, being duly sworn, giving his shield number as 53, attached to the 48th precinct, testified as follows:

Direct examination by Mr. Foley.

Q. Sergeant, were you a police officer of the City of New York with the same rank, shield number and assignment as you have just given us on the 13th day of December, 1946? A. I was.

Q. What was your tour of duty that day? A. Four to twelve.

Q. What were you doing? A. I was on patrol, 188
supervising patrols in a radio car.

The Court: Four to twelve P. M.?

The Witness: Yes.

Q. Did you in the regular course of your duties receive a radio signal in the car? A. Yes.

Q. As the result of that signal, where did you proceed? A. To 1439 Webster Avenue.

Q. When you arrived there, what did you do? A. I found the place open and a man that was in charge of the store standing in front of the store. I proceeded with him inside of the store. Upon arriving inside, I discovered that the detective 189
was seated or slumped over a box or boxes of articles in the place. He was in a pool of blood, slumped over forward in a pool of blood, with his right hand down alongside of him.

Q. At the time you saw him there, did you see a gun? A. I did.

Q. Where was it? A. Laying in pool of blood alongside of him.

Q. Near where his hand hung down? A. That's right.

Q. What did you observe about his condition? A. That is body was slumped forward, bleeding profusely. There was a pool of blood on the floor. He was apparently beyond aid.

Q. Did you call up for an ambulance? A. I did.

Q. Were you there when the doctor arrived? A. I was.

Q. Was that the same Dr. Evans who was just here? A. I didn't see him.

Q. Did you stay there until the body was removed? A. I did.

191

Mr. Foley: May I have a moment, your Honor?

The Court: Yes.

Q. Sergeant, I show you a Smith & Wesson, M & P service revolver, No. 632059, and ask you whether or not that is the gun which you saw on the floor next to Burke's hand as he lay slumped over the boxes? A. That is the gun that was apparently used by him at the time.

Mr. Fleischman: I move to strike out the latter part of the answer "apparently." The witness does not know whether it was or not.

192

The Court: Strike it out. The jury is instructed to disregard that part of the answer, beginning with "apparently used at the time." Just disregard that part of the answer.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: No objection.

The Court: Received as People's Exhibit 1.

(Same received in evidence and marked People's Ex. 1 of this date.)

Mr. Foley: Your witness.

Cross-examination by Mr. Ehrman.

Q. How man guns did you find in the place of business when you arrived there? A. Two.

Q. So we have the one that you identified— A. Yes.

Q. —and another gun? A. Yes. 194

Q. What was the make of the other gun? A. A Spanish make, I believe.

Q. A Spanish what? A. A Spanish make, I believe.

Q. Is that the only identification you can make of it? A. That is all.

Q. Wasn't there a third gun there? A. Not that I know of.

Q. There was none shown you? A. No.

Q. How many boxes were there piled up on the floor at the time you saw the deceased's body? A. In the entire back room?

Q. No, just that portion over which the body leaned over. A. Possibly two or three at the most. 195

Q. What would be the size of each one of the boxes? A. Well, I should say about ten inches, each box.

Q. In other words, a man standing up in the back of the boxes, would be seen if anybody should come into the store? A. In back of those two particular boxes you are speaking in reference to?

Q. That is right. A. Yes.

Q. Are you certain that was detective Burke's original position in the store before you came in there? A. I can't answer that.

Mr. Ehrman: That is all.

Cross-examination by Mr. Fleischman.

Q. You say that the other gun was a Spanish type gun? A. Yes.

Q. You examined it, of course? A. I just looked at it in a hurry.

Q. Did you examine it to see whether it was
197 loaded? A. I know it was loaded.

Q. You know it was loaded? A. Yes.

Q. Were you the first one in the store, Sergeant? A. I was accompanied by the man that had charge of the store at the time.

Q. What did you do with that Spanish type gun? A. It was left on the counter and taken by the detectives to the Property Clerk.

Q. Do you know what detective took that gun? A. I think Houston.

Q. Pardon? A. I think his name is Houston, a ballistic expert.

Mr. Fleischman: That is all.

198 *Redirect examination by Mr. Foley.*

Q. You have referred to cases piled two or three high, over which you found Burke's body slumped when you came in? A. That's right.

Q. Was there in back of those cases a higher barricade of cases?

Mr. Ehrman: I object to the question and move to strike it out on the ground the Sergeant testified to something else originally. He is being led.

The Court: Objection overruled.

Mr. Foley: I know the Sergeant did not testify to anything else originally. I do not want the statement made.

The Court: All right; the ruling has been made.

Mr. Ehrman: Pardon me, Mr. Foley; I should not have done that.

200

Q. You have spoken of a low barricade of cases two or three high, over which you found detective Burke's body slumped? A. That is right.

Q. Was there any barricade behind that, a higher barricade, a higher one of boxes? A. Yes.

Q. Was it so high that a man behind it could not be seen by anyone entering the store? A. Yes.

Q. I show you a gun—it looks like a 32 Spanish—I cannot identify it closer than that; I can't read the numbers—is this the other gun that was in the premises when you went there, concerning which you have been examined? A. Yes.

Q. Is that the other gun that was turned over to Mr. Houston of the Ballistic Bureau? A. Yes.

201

Mr. Foley: Shall I offer it for identification or offer it in evidence?

Mr. Ehrman: Mark it for identification.

The Court: People's Ex. B for identification.

(Same marked People's Ex. B for identification of this date.)

Mr. Ehrman: Are you finished with the witness?

Mr. Foley: Yes.

Recross-examination by Mr. Ehrman.

Q. When you arrived at the store, was anybody else with you? A. The driver of the car.

Q. You and the driver walked into the store with Mr. Shaw? A. He walked in behind me.

Q. Did you have a conversation with Mr. Shaw at that time? A. I did.

Q. Did you ask him to tell the story of the
203 occurrence? A. That's right.

Q. Did you also ask him to describe the man or men who allegedly held up the store? A. I did.

Q. You also asked him to describe the man or men who allegedly killed the police officer? A. I did.

Q. What did Mr. Shaw tell you as to their appearance or as to their looks? A. He gave a description.

The Court: Keep your voice up.

A. He gave a description to the best of his ability.

204

Mr. Ehrman: I move to strike out the answer.

The Court: What description did he give you?

The Witness: He gave a description of two colored men entering the store, one tall, the other a bit shorter, quite dark; one wearing a Camel's hair coat. I immediately give the description to the Dispatcher in Headquarters.

Q. Did he tell you that they were both quite dark? A. He did.

Q. Did Mr. Shaw tell you that? A. He did.

Q. Did he tell you whether they were about six feet tall or five feet tall? A. Five foot ten. Between——

Q. Both of them? A. No, one around five foot seven or eight.

Q. Did he tell you whether heavy or light? A. One heavy set; one was slender.

Q. Any other identification account of them at that time? A. He didn't give me—any other further identification at that time. 206

Q. Did he tell you what kind of hats they wore? A. No.

Q. Did he tell you both were bare headed? A. He said one was bare headed; the other he don't recall.

Mr. Ehrman: That is all.

By Mr. Foley.

Q. Did he state to you whether either one of them had a mustache? A. He did.

Q. What? A. He did. He said one had a short mustache.

Q. Did he tell you which one? Was it the man with the gun or without it? A. I can't quite recall that. 207

Q. After you made your report to the Telegraph Bureau and the body was removed, the investigation was continued by detectives, not by you? A. Yes.

Mr. Wilkinson: Objected to as leading.

The Court: Objection overruled.

208 *Charles A. Hess—For People—Recross.*

Q. You did not proceed further in active participation of this case? A. No.

Mr. Wilkinson: Objected to as leading.
The Court: Same ruling.
Mr. Wilkinson: Exception.
Mr. Foley: That is all.

By Mr. Fleischman.

Q. You identified this as the other gun you picked up the evening you were at the store? A. Yes.

209 Q. Did you put any identifying marks on that gun? A. It was laying on one of the boxes.

Q. You did not put any identifying marks on this gun? A. No.

Q. You cannot say whether of your own knowledge this is the actual gun? A. It had the same case; apparently the same case, same gun.

Q. There are many guns of this type? A. Possibly.

Q. You don't know whether this is the same gun or not? A. It is a similar gun.

Q. It may be a similar gun, but not the same gun as you picked up?

210 Mr. Foley: Objected to.
The Court: I will allow it but not in that form.

Q. Did you put any identifying mark on that gun? A. No.

Q. You cannot definitely state to your own knowledge that was the identical gun you picked up? A. The detectives handled the evidence.

Q. I asked——

Mr. Ehrman: I move to strike out the answer on behalf of Moore, what the detectives did.

The Court: Strike it out. The jury is instructed to disregard it.

(Pending question repeated by the Court Stenographer as follows: "You cannot definitely state of your own knowledge that was the identical gun you picked up?")

A. That gun has the same appearance as the gun I picked up. 212

The Court: Did you give the gun you picked up to a detective?

The Witness: I did.

Mr. Fleischman: I would like an answer to the question, yes or no. He answered——

The Court: The question is more of a statement. Ask it properly.

Q. Sergeant, you definitely state that is the gun you picked up at the scene on December 13th, 1946? A. I definitely state that gun has a similar appearance as the gun I picked up there that night.

Mr. Fleischman: No further questions. Excuse me. That is all. 213

By Mr. Foley.

Q. Do you know whether this gun, People's Exhibit B for identification was loaded? A. It was.

Q. Fully? A. Yes.

Mr. Foley: Thank you. That is all.

Mr. Ehrman: Just a minute.

The Court: You have had enough on this particular point. Is it something new?

Mr. Ehrman: As the result of this question.

The Court: All right.

By Mr. Ehrman.

Q. You just stated this looked like the gun you picked up that evening? A. I said it has the same appearance, yes.

215 Q. How can you state this gun, which looked like the gun you picked up, was loaded or unloaded?

Mr. Foley: Objected to.

The Court: Objection overruled.

A. It was opened at the counter.

The Court: Did the gun which you picked up—was the gun you picked up that night and gave to a detective loaded, yes or no?

The Witness: Yes.

The Court: Proceed.

216 Q. You don't know whether this is the gun or not?

Mr. Foley: Is that a question or statement?

The Court: It has been sufficiently answered.

Mr. Ehrman: All right. That is all.

The Court: The next witness.

JAMES E. DINAN, called as a witness by the People, being duly sworn, giving his title as Lieutenant, attached to the 48th Squad, testified as follows:

Direct examination by Mr. Foley.

Q. Were you a police officer of the City of New York with the same rank, shield number and assignment you have just given us, on the 13th of December, 1946? A. I was.

Q. Were you at that time in charge of the detectives in the 48th Squad? A. I was.

Q. Was detective James M. Burke a member 218
of that squad? A. He was.

Q. Did you in your official capacity give him an assignment of duty for the evening of December 13th, 1946? A. I did.

Q. Where was he assigned? A. He was assigned to No. 1439 Webster Avenue inside a liquor package store.

Q. What were the hours of his assignment? A. From five P. M. to the closing of the store.

Q. Did he have anyone assigned with him? A. He did.

Q. What was the name of that detective? A. Former detective Rosensteil.

Q. Was December 13th, 1946, the first day on 219
which a new hour of assignment came into effect in the Department? A. It was.

Q. Was the change at that time from six in the evening to five in the evening? A. It was.

Q. Did you in the course of your official duties try to reach all detectives assigned to your squad, to notify them that they were to report to their "plants" one hour earlier?

Mr. Wilkinson: Objected to, leading.

Mr. Fleischman: Same objection.

The Court: Objection sustained.

Mr. Foley: I cannot hear you.

The Court: The defendants objected. Objection sustained.

Q. Did you notify detective Burke that his hours of duty had been moved forward from six to closing to five to closing? A. He was notified.

Q. Do you know when detective Burke became a member of the police force? A. In 1922.

221 Q. Do you know in what year he became a detective? A. June 6, 1925.

Q. What was his grade at the time of his death? A. First grade detective.

Q. Do you know of your own knowledge whether or not he had spent his entire service in the County of the Bronx? A. He had, as a detective.

Q. Was he during all that time assigned to what is known as the 48th precinct? A. He was.

Mr. Foley: May I have a moment, your Honor?

The Court: Yes.

Q. Have you a record of the registration number
222 of detective Burke's service gun? A. I have.

Q. Will you examine it please and tell me whether or not there is more than one gun recorded for detective Burke? A. There are two guns recorded.

Q. Is one of them a 38 caliber, Smith & Wesson, No. 632069? A. Yes, sir.

Q. What is the other one? A. A 38 caliber long, Spanish make, with trademark "TAC". Serial Number 186,463.

Q. Is that a 38? A. 32.

Q. You said "38;" which is it? A. A 32.

Q. Can you find the identification on this gun I show you, People's Ex. B for identification?

Mr. Foley: I will withdraw that question and save it for detective Butts or Houston from the Ballistics. That is all.

Cross-examination by Mr. Ehrman.

Q. Can you tell us the exact date these two guns were registered to the ownership of detective Burke? A. I haven't the record with respect to that, but there is a record in the police department. 224

Q. Will you let us have it during the day? A. I will try to get it. I will get it.

Mr. Ehrman: Thank you. Will your Honor instruct the witness to have it produced?

The Court: He has indicated he will have it.

Mr. Ehrman: Thank you.

The Court: The next witness.

225

DR. CHARLES H. HOCHMAN, called as a witness by the People, being duly sworn, giving his address as No. 1749 Grand Concourse, testified as follows:

Direct examination by Mr. Foley.

Q. What is your official title? A. Assistant Medical Examiner, attached to Bronx County.

226 *Dr. Charles H. Hochman—For People—Direct.*

Q. Did you hold the same position on December 13th, 1946? A. I did.

Q. How long have you held that position? A. More than fifteen years.

Q. Are you a graduate of a medical school? A. I am.

Q. What school? A. University of Bellevue Medical School.

Q. What year? A. 1914.

Q. You are regularly licensed to practice medicine in the State of New York? A. I am.

Q. In your capacity as Assistant Medical Ex-
227 aminer, attached to Bronx County, have you performed autopsies at the requestion of the State? A. I have.

Q. And other autopsies? A. Yes.

Q. Can you tell me how many such autopsies you have performed? A. More than 3,000.

Q. Were you at No. 1439 Webster Avenue on the night of the 13th of December, 1946? A. I was.

Q. Did you see there the body of detective James M. Burke? A. I did.

Q. At the time you got there, was detective Burke leaning over cases or was he on his back on the floor? A. He was lying on the floor on his left side towards—his back—partly on the left
228 side and back.

Q. On December 14th, 1946, was he identified to you at the Fordham Morgue? A. He was, by his brother, William M. Burke.

Q. Did you there perform an autopsy on that date? A. I did.

Q. Will you tell us what you did and what your findings were? A. The body was that of a male,

white adult, 68 inches in height; estimated weight, 270 pounds. There is a general pallor, which means paleness, of the face and body, with cyanosis, which means blueness, both of the ears and finger-nails. The hair was light brown, gray at the temples, bald on the top. Eyebrows light color—we call it gray. The right eye was mutilated. Rigor mortis, which means stiffening after death, was present. Postmortem lividity, which means a discoloration after death, was present over the back of the body, extremities and neck.

External examination. There was a wound on the outer side of the right eye running downwards from the outer angle of the eye three-quarters of an inch in length. This wound was surrounded by an ingraining or tatoo, more marked on its outer surface, one-quarter of an inch in width, sort of downward and side. 230

Q. You mean "outer," as from the center of the head? A. That is right. Bullet wound No. 2. The right eye-ball is perforated by a bullet tract, which is seen penetrating through the upper portion of the orbit—the orbit being the orbital cavity where the eye is housed—½ inch in width.

Bullet wound No. 3 was 3 inches above the left supraorbital ridge, which is the part where the eyebrow is, and 1½ inches to the left of the midline of the body, where there was a perforation three-quarters of an inch in diameter. Its lower left portion is stellate in character, which means sort of star shaped. 231

There was a wound 1½ inches in front of the left external auditory meatus—that is the opening in the left ear—and 1 inch above was a bullet perforation. This was three-eights of an inch in diameter, surrounded by a contused, which means

injured, area, 1/16th of an inch in width. Its upper and inner margin shows an extension of the contused area 3/8th of an inch by 3/4ths of an inch.

There was a wound in and out through the upper portion of the left ear. This was an irregular perforation 1/2 inch in diameter, which was surrounded by a contused area 1/8th inch in width.

There was another wound behind the left ear two inches above the mastoid, which is the bony prominence behind the ear, 3/8th of an inch in
233 diameter; extending from its anterior margin was a grooved area 3/4s of an inch by 1/4 inch.

One inch behind and one inch above the left mastoid was an irregular perforation one-half inch in diameter.

There was another wound in the midline of the head seven inches above the left external auditory meatus. This perforation was 1/2 inch in diameter, the posterior or back part of the wound being stellate—again meaning star shaped—in character.

There was another wound one-and-a-half inches behind the right mastoid process and on the level with it is an irregular perforation. This perforation was somewhat stellate in character. The
234 edges of the wound were everted, meaning turned out 1/2 inch in diameter. Through this wound exuded some brain tissue. Brain tissue was coming out.

Another wound one inch in front and 1 1/2 inches below the right coraco-clavicular junction—this is the junction at the point of the right shoulder—three-eighths of an inch in diameter, with a

grooving below and above, one inch in length. There was a slight ingraining again, a tatooing of the skin surrounding this wound.

In the mid-right axilla, which means the arm pit, was a wound ½ inch in diameter, surrounded by an ecchymotic area, which means black and blue, two inches in diameter.

On the back, when the body was turned, 56 inches above the left heel and one inch to the left of the midline of the body, was an ecchymotic area, which means black and blue area, irregularly one inch in diameter, beneath which could be felt a metallic mass. An incision over this 236
area and a .45 caliber copper jacketed bullet was removed. This bullet was marked "CHH JB" on the base, for identification.

Q. This is the first time you have spoken of making an incision, isn't it, doctor? A. Yes.

Q. All the wounds you have heretofore described were wounds that could be observed when the body was stripped and laid out for your examination, is that correct? A. That is correct.

Q. Some of the wounds you have spoken of were wounds of entrance and some were wounds of exit? A. Correct.

Q. Some of the bullets made two wounds, one of entrance and one of exit? A. Correct.

Q. This is the first time you have talked of 237
making an incision on the corpse? A. Yes.

Q. Have you that bullet with you? A. I have. (Witness produces bullet.)

Q. Do you find upon that bullet, which you have produced, the identifying marks which you have testified you made upon it when you extracted it from the body of detective Burke on the 14th of December? A. I do.

Mr. Foley: I offer it in evidence.

(Mr. Foley hands same to counsel.)

Mr. Wilkinson: No objection.

The Court: Received.

(Same received in evidence and marked People's Ex. 2 in evidence as of this date.)

Q. This bullet, People's Ex. 2 in evidence, what did you do with it when you extracted it from James Burke's body at the Fordham Morgue on December 14th, 1946? A. I then turned it over to Sergeant Butts of the Ballistic Bureau.

238 Q. Sergeant Butts of the Ballistic Bureau of the New York City Police? A. That is right.

Q. Did you give it to Butts up in the Fordham Morgue? A. I did.

Q. Will you proceed with relating what you did on the occasion of the autopsy? A. On the back, 60 inches above the right heel and four inches to the right of the midline of the body was an abraded—that means scraped—area running diagonally from left to right and downwards 1½ inches in length and ½ inch in width. This was surrounded by ecchymosis.

On the inner side at the middle of the left palm was a contused, grooved area ½ inch by ¼ inch.

240 Q. When you say "palm," that is not a medical term, but refers to what we laymen understand as the palm of the hand, which had a grazed wound in it? A. That is right.

Q. Proceed. A. The scalp was then incised and reflected.

Q. What do you mean by "reflected"? A. Turned back. Two inches above the left supra-

orbital ridge and one inch to the left of the midline was seen a perforation one-half inch in diameter, surrounded by a stellate—star shaped—comminuted, which means many particles—fracture of the skull, more marked to the right, involving the right and left parietal bones—they are the two bones on the topmost part of the skull—and frontal bones, which is the bone in the front part of the skull. Over the vertex of the skull—that means the top—in the midline is a bullet perforation, irregularly one-half inch in diameter, with stellate fracturing surrounding this. One inch behind and one inch above the 242
right mastoid process is an irregular perforation three-quarters of an inch by one-half inch, the occipital bone, which is the bone back of the skull, in this region (indicating) being comminutedly fractured.

Q. That means splintered? A. Splintered or in many pieces. The calvarium, which means the top part of the skull, was removed, and marked intermeningeal hemorrhage, which means a hemorrhage between the linings of the membrane of the brain, over both cerebri, which is the topmost portions of the brain, and at the base in all fossae is seen.

The brain showed a hemorrhagic tract running 243
through the left parietal and right occipital lobes. Also a tract running through both frontal lobes of the brain. The dura was stripped—that means the innermost line of the brain was stripped from the bones and an inward bevelling is seen in the two perforations noted over the left frontal and central portions of the skull. That was the wound that came in above on the left side of the

head and the wound in the central part of the head. The perforation in the right occipital bone shows bevelling or shelving outward. There is noted a comminuted fracture of the right orbital plate of the frontal bone. That means the bone at the base of the brain over the right eye—with bevelling outwards, the fracture.

Q. What does that indicate? A. When you see bevelling inwards, that wound is one of entrance. When it is bevelling outwards, that is an exit wound as it leaves.

Q. You have indicated so far after the scalp
245 was incised and reflected, the point of entrance of the bullet and the course it took through the brain and its point of exit? A. Of two bullets.

Q. Proceed. A. The remainder of the autopsy showed detective Burke had some coronary, artery disease; hardening of the arteries of the heart that supply blood to the musculature of the heart; one of the branches of his artery was almost completely occluded. Signs of changes in the heart muscle, shown by the fibers present or the fibrous changes. His other organs showed a fatty infiltration.

Q. How many wounds of entrance have you described to us in your testimony? A. Six wounds of entrance.

246 Q. Can you say by how many bullets they were made? A. I should say five; five wounds.

Q. Upon what do you base that conclusion? A. On the direction of the wounds and finding of the tracts that certain wounds may have been continuous wounds made by the same bullet; others were wounds made by similar bullets.

Q. As a result of your examination, can you give us an opinion as to the cause of death? A. I can.

Q. What is it? A. Gunshot wounds of the head and neck penetrating the brain and skull. Hemorrhage.

Mr. Foley: Your witness.

Mr. Furman: No questions on behalf of the defendant Moore.

Mr. Fleischman: No questions, your Honor.

Mr. Foley: Detective Plate.

The Court: I have been asked for a recess. (To jurors) Step upstairs. I will send for you in a few minutes. 248

(After short recess.)

HAROLD F. J. PLATE, called as a witness by the People, being duly sworn, giving his shield number as No. 36, assigned to the Bureau of Criminal Identification, attached to the Bronx Homicide Squad, testified as follows:

Direct examination by Mr. Foley.

Q. Detective Plate, did you have the same assignment rank and shief number you have just given us in the police department of the City of New York on December 13th, 1946? A. Yes, sir, I did. 249

Q. What are your duties? A. Professional photographer and finger-print technician.

Q. How long have you been taking photographs? A. About 20 or 21 years.

Q. In the course of time, do you know about how many you have taken in the course of your official duties? A. Quite numerous.

The Court: What do you mean by that?

The Witness: Many, many pictures; many cases. I couldn't tell you, your Honor, how many pictures in number.

Q. Have you brought in the course of your duties pictures to Court and testified concerning them on a great many occasions? A. I did.

Mr. Foley: May we have the one marked for identification?

The Court: The Court does not keep exhibits for identification.

251

Q. At what time did you report to the scene on Webster Avenue on the night of December 13, 1946? A. About 6:30 P. M.

Q. Was that Ray's Liquor Store? A. Exactly.

Q. I show you People's Ex. A for identification and ask you whether or not you took that picture? A. Yes, I did.

Q. Is that a picture which purports to show what might be seen from the front of the store looking toward the rear? A. That is correct.

Q. Is it a true and accurate representation of what you saw there at that time? A. Yes, it is.

252

Mr. Foley: If your Honor please, I would like to confer with counsel for the defense concerning the offer I intend to make in evidence.

The Court: You may.

(Mr. Foley confers with respective counsel for the defense.)

Mr. Foley: If your Honor please, with respect to People's Ex. A for identification,

I now offer it in evidence, but only insofar as the representation on the face is concerned, not any markings that appear on the back of it.

(Exhibit handed to the Court.)

Mr. Foley: I don't know whether I have offered it. Perhaps it would be better if at this time I repeat the offer of People's Exhibit A for Identification and now offer in evidence that exhibit only insofar as the picture represented upon it is concerned; nothing on the back of the exhibit.

Mr. Ehrman: I object to it for both de- 254
fendants unless your Honor allows me to ask a few qualifying questions concerning this exhibit.

The Court: You may.

By Mr. Ehrman.

Q. This photograph marked Ex. A for identification, does that represent to your knowledge the actual scene at the time of the alleged murder? A. That is the conditions as I found them on my arrival.

Q. I beg your pardon, I didn't ask that; I asked another question. A. Repeat it again.

255

The Court: Doesn't the answer concede he wasn't there?

Mr. Ehrman: No, your Honor.

The Court: Go ahead.

(The pending question and answer repeated by the stenographer as follows: "Q. This photograph marked Ex. A for identification, does that represent to your knowl-

edge the actual scene at the time of the alleged murder? A. That is the conditions as I found them on my arrival.")

Mr. Ehrman: I move to strike out the answer as not responsive.

The Court: Strike it out. The jury is instructed to disregard it.

(Question again repeated by the stenographer.)

A. Well——

The Court: Were you there?

257 The Witness: I wasn't there so I don't know what the conditions were.

The Court: Answer the question.

The Witness: No, I say I don't know.

Mr. Ehrman: That is all, I object to the introduction of the exhibit in evidence.

The Court: On what ground?

Mr. Ehrman: On the ground it is not a reproduction of the original scene after the alleged murder.

The Court: I will receive it. I have looked at it.

Mr. Ehrman: Exception. On the——

The Court: Just a minute.

258 Mr. Ehrman: On the further ground it may——

The Court: On the ground it is inflammatory?

Mr. Fleischman: Yes, your Honor. On the further ground——

The Court: I will receive the picture in evidence at this time. It is not to be exhibited to the jury at this time until the Court permits it to be exhibited.

Mr. Ehrman: I except to the ruling of the Court.

Mr. Fleischman: Exception for Lester Haughton.

(Same received in evidence and marked People's Ex. 3 of this date.)

The Court: Where did you stand when you took that picture?

The Witness: At the front entrance of the door looking in a westerly direction like to the rear of the store.

Q. This store is on the westerly side of Webster Avenue? A. Correct. 260

Q. As you stood in front of the store pointing your camera to the rear, you were taking the picture in a westerly direction? A. That is correct.

Q. Referring to People's Ex. 3 in evidence, I call your attention specifically to the numbers in the top left hand corner and the writing in the lower right hand corner and ask you whether or not that is in your handwriting? A. That is correct, both my handwriting.

Q. None of the other marks or writings on there were made by you? A. No, sir, they were not.

261

Q. I show you this photograph and ask you whether it is one of those you took on the same evening, December 13th, at those premises on Webster Avenue? A. Yes, sir, it is.

Q. Where were you when you took that picture; in what direction were you facing? A. I was standing in the rear of the store looking out, which would be an easterly direction toward Webster Avenue.

Q. Is that a true and accurate representation of what you saw there at that time? A. Yes, sir, it is.

Mr. Foley: I offer it in evidence.

Mr. Ehrman: Objected to on the same grounds as People's Ex. 1.

(Mr. Ehrman confers with associates.)

Mr. Ehrman: I renew my objection to this exhibit.

The Court: Let me see it.

(Photograph handed to the Court.)

The Court: Objection overruled.

263 Mr. Fleischman: I want to make an objection on behalf of the defendant, Lester Haughton, to the introduction of the picture in evidence on the ground that there is no testimony that it is a fair representation of the scene at the time of the alleged killing herein.

The Court: What time did you take that picture?

The Witness: 6:30, as I arrived at the scene.

The Court: It is a fair representation of—

The Witness: —of the conditions as I found them.

The Court: Objection overruled.

264 Mr. Fleischman: Exception.

(Same received in evidence and marked People's Ex. 4 of this date.)

The Court: Is it a true and accurate representation?

The Witness: Yes, it is a true and accurate representation of conditions as I found them.

Mr. Ehrman: I do not know whether I took an exception to your Honor's ruling.

The Court: Now it is you do not have to take an exception.

Mr. Ehrman: Not in the Federal Courts anyhow.

The Court: Not in the State courts now.

Q. Detective Plate, People's Ex. 3, which you first identified, is a picture taken as you looked toward the rear of the store from the front? A. That is correct.

Q. People's Ex. 4, which has been just marked in evidence is the same store looking from the rear toward the door? A. That is correct. 266

Q. I show you another photograph and ask you is it one of those you took on that occasion? A. Yes, sir, it is.

Q. What does it purport to show? A. It shows the rear of the store where the cases are—the corrugated cardboard boxes and cases of wines and liquors are stored.

Q. Where were you when you took that picture? A. At the end of the counter.

Q. When you speak of the end of the counter, is it the end as you come in the store or the rear end? A. The rear end of the counter.

Q. You went all the way to the rear end of the counter and took a close-up of the boxes piled in the rear? A. That is correct. 267

Q. Was that taken at the same time you took the other pictures, People's Exs. 3 and 4? A. Yes.

Mr. Foley: I offer it in evidence.

The Court: Is it a true and accurate representation of the conditions existing at that time?

The Witness: Yes, sir, it is.

Mr. Ehrman: I object to it on the ground the testimony of Sergeant Hess was to the effect when he arrived at the store at 6:10 that the place—that the boxes and other things were moved around. This witness got there at 6:30, so that there is absolutely no connection between the alleged crime and this photograph.

Mr. Foley: I respectfully submit that there was no testimony by the Sergeant that any boxes had been moved around.

269 Mr. Ehrman: That is my recollection.

The Court: Received.

Mr. Fleischman: Same objection for the defendant Haughton.

The Court: The same ruling.

(Same received in evidence and marked People's Ex. 5 of this date.)

Q. Detective Plate, I show you another photograph and ask you is it one of those you took at the same time on the same date? A. Yes, sir.

Q. What does that purport to show? A. That is a front view of Ray's liquor store, 1439 Webster Ave.

270 Q. That was taken when you were outside looking toward the store? A. In a westerly direction.

Q. Is it a true and accurate representation of what you saw there at that time? A. Yes, sir, it is.

Mr. Foley: I offer it in evidence.

Mr. Ehrman: No objection.

Mr. Fleischman: No objection.

Mr. Foley: I want to amend the offer.

Mr. Wilkinson: Is that to the front of the picture?

Mr. Foley: That was the amendment I was going to make. This is offered only with respect to the picture represented on the front surface and not at all as to any writings or markings that may be on the back.

The Court: There has been no objection to it. The Court will receive it. You are not to exhibit it to the jury at this time.

Mr. Foley: Thank you.

(Same received in evidence and marked 272
People's Exhibit 6 of this date.)

Q. Detective Plate, I show you one more photograph and ask you whether it is one of the series you took at that time and place on that date and at the same time? A. Yes, sir, it is.

Q. What does it purport to represent? A. It represents a true and accurate condition of the front half of the store, the front part of an Oldsmobile car belonging to detective Burke and a tire and tube, which was taken from the right front wheel lying on the sidewalk.

Mr. Foley: I offer this in evidence at this time only with respect to the representation 273
of the front of it, not with respect to any writings or markings on the back of the photograph.

Mr. Ehrman: I object to the introduction of this exhibit on the ground it has nothing to do with the crime itself. It serves no purpose.

(Photograph handed to the Court.)

274 *Harold F. J. Plate—For People—Direct.*

Mr. Ehrman: I also move to strike out the witness's statement for the same reason—nothing to do with the crime itself.

The Court: What was the question and answer?

(The pending question and answer was repeated by the stenographer in its entirety. On second reading of the answer the stenographer read as follows: "It represents a true and accurate condition of the front half of the store.")

The Court: The answer is allowed to and including "front half of the store." The rest
275 of the answer is stricken out and the jury is instructed to disregard it.

The exhibit will be received in evidence, but not to be exhibited to the jury at this time.

Mr. Fleischman: I object to the introduction of the picture in evidence on the further ground that it incorporates a lot of irrelevant views here; they are views of several gentlemen; views of an automobile, an automobile tire and tube, which will tend to confuse the jury for the purpose for which the picture was taken.

The Court: Objection overruled.

276 Mr. Fleischman: Exception.

(Photograph received in evidence and marked People's Ex. 7 of this date.)

Mr. Foley: That is all.

The Court: Any questions?

Mr. Fleischman: No questions.

JAMES HOLT, a witness in behalf of The People, having been first duly sworn, stated that he was a detective in the Police Department of the City of New York, shield 763, assigned to the 48th Squad, and testified as follows:

Direct examination by Mr. Foley.

Q. Detective Holt, did you have the same rank, assignment and shield number that you have just given us in the Police Department of the City of New York on the 13th of December, 1946? A. I did.

Q. Is your squad the 48? A. Yes, sir. 278

Q. Is that the same one in which the deceased, Detective Burke, worked? A. It was.

Q. What was your tour of duty on the 13th of December? A. I was doing night duty that night, December 13th. That was from six p. m. on December 13th to eight a. m. on December 14th.

Q. And did you in response to instructions proceed to 1439 Webster Avenue in the County of Bronx? A. I did.

Q. Did anybody accompany you? A. I was accompanied by three other members of the 48th Squad detectives.

Q. Do you know at what time you arrived there? A. About six twenty p. m. 279

Q. What did you find when you arrived at that premises? A. I entered the store and upon entering the store I saw Richard Shaw, the proprietor, behind the counter. There had been uniformed policemen present. I looked towards the back and I saw Detective Burke. He was slumped over two cases of liquor. I went towards Detective Burke and as I approached him I noticed

280 *James Holt—For People—Direct.*

a hole appeared in the top of his head. He was bleeding from the ears and the nose and I noticed a discoloration mark alongside of his right eye. I then went back to Mr. Shaw. I asked him for the details of what happened.

Q. You had a conversation with the proprietor? A. I did.

Q. And you were one of those assigned to the investigation of this case? A. I was.

Q. In the course of your investigation did you assist in a search of the premises? A. I did.

Q. And what did you find there? A. I found
281 two empty shells in the vicinity of Detective Burke and then I found a copper casing near the door, the entrance to the store.

Q. The two empty shells you found, were they of forty-five caliber? A. They were.

Q. Did you mark them for identification? A. I did.

Q. Do you find the marks on them? A. I do.

Q. What are they? A. I have one marked J and H underneath it. The second I have marked J with H underneath it and a one alongside the J.

Q. This is the one that I return to you, which has on it just J. H., is that correct? A. J. H.

Mr. Foley: I offer it in evidence.

282 Mr. Wilkinson: If the Court pleases, I would like a few preliminary questions before the offer is passed upon with respect to the competency of this witness with respect to this particular shell.

The Court: Go ahead, ask him.

By Mr. Wilkinson.

Q. Detective Holt, has this shell been in your possession from the time you picked it up on December 13th? A. Not continually, no, sir.

Q. On December 13th, 1946 did you turn it over to someone else? A. I did.

Q. When did you next see this shell? A. On December 31st, 1946.

Q. Did you have it in your possession from December 31st? A. I did.

Q. Until the present time? A. I did.

Mr. Wilkinson: I object to the admissibility of this shell on the grounds that it is immaterial, irrelevant and incompetent and the proper connection has not been shown for its admissibility at this time. 284

Mr. Fleischman: Same objection in behalf of Lester Haughton.

The Court: Overruled; received.

Mr. Wilkinson: I respectfully except.

Mr. Fleischman: Exception.

(Received and marked People's Exhibit 8.)

By Mr. Foley.

Q. Officer, I now show you a discharged forty-five shell and ask you whether that is the one you referred to in your testimony as marked J. H. one. A. It is. 285

Q. And did you find it in the store on the night that you visited there and at the time you described? A. I did.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: I make the same objection as to these shells in behalf of the defendant Moore.

Mr. Fleischman: The same objection in behalf of Lester Haughton.

The Court: Same ruling; received.

Mr. Wilkinson: I respectfully except.

Mr. Fleischman: Exception.

(Received and marked People's Exhibit 9.)

Q. Now, on December 13th what did you do
287 with People's Exhibits 8 and 9, these empty forty-five shell casings? A. When Detective Sam Houston of the Ballistics Bureau arrived on the scene, I handed them over to him.

Q. And was it from him that you received them back on the 31st of December of 1946? A. It was.

Q. You referred in your testimony to something else that you had found there and I ask you whether this is the object. A. It is.

Q. What did you call it? A. I called it a copper casing.

Q. It is a casing for the nose of a bullet? A. It is.

Q. And did you mark it? A. I did.

Q. Did you find it at the same time that you
288 did the People's Exhibits 8 and 9? A. I did.

Q. And did you testify you found Exhibits 8 and 9 in the rear of the store near Burke's body? A. Yes.

Q. And this object in the front of the store? A. Yes, sir.

Q. How did you mark it? A. I have it marked J. H.

Q. And you find those marks upon it now? A. I do.

Q. Did you turn this object over to Sam Houston of the Ballistic Bureau, together with Exhibits 8 and 9? A. I did.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: I make the same objection in behalf of the defendant Moore.

Mr. Fleischman: Same objection in behalf of the defendant Lester Haughton.

The Court: You referred to it as an object. What is it?

Mr. Foley: A shell casing, a copper jacket, a nose of a bullet. 290

The Court: Received.

(Received and marked People's Exhibit 10.)

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

Q. Did you turn anything else over to Detective Houston on that night? A. I did.

Q. What was it? A. I turned over a thirty-eight Smith and Wesson special revolver and a thirty-two caliber Long revolver, Spanish type.

Q. I show you People's Exhibit 1 in evidence, a thirty-eight, and ask you whether or not that is the thirty-eight to which you refer when you say you turned one over to Detective Houston on that night. A. May I look at my notes? 291

The Court: If you need them to refresh your recollection, you may look.

The Witness: This is the gun.

Q. Thank you. Now I show you People's Exhibit B for Identification and ask you if you can tell whether or not that is the other gun, the thirty-two Long, that you turned over to Detective Houston. A. It is.

Q. Where was this gun, People's Exhibit B for Identification, when you first saw it? A. I first saw it when I entered the store and I went near Detective Burke. It was on top of about three cases high of liquor.

Q. I show you People's Exhibit 5 in evidence and ask you whether or not you can see this gun, People's Exhibit B, in that picture. A. I do.

293 Q. And is that picture, People's Exhibit 5 in evidence, a true and accurate representation of the condition of those boxes with the gun resting upon them as you first saw them and it? A. It is.

Mr. Foley: I now repeat my offer in evidence of this gun, People's Exhibit B for Identification.

Mr. Wilkinson: I object to it in behalf of the defendant Moore. The People have failed to prove the proper foundation and it is immaterial, irrelevant and incompetent. The proper connection between the finding and the identity and the true ownership

294 hasn't been shown and I respectfully object to its admissibility.

Mr. Fleischman: I object, your Honor pleases, on the further ground that there is no evidence or testimony to the effect that this gun or revolver is the revolver that was discovered in the store on the night of the alleged crime and further that this revolver was found about an hour after the commis-

sion of the alleged crime when this detective for the first time claims he saw it on the top of some boxes.

The Court: Overruled. Received.

Mr. Fleischman: Exception.

Mr. Wilkinson: I respectfully except.

(People's Exhibit B for Identification received and marked People's Exhibit 11.)

Mr. Foley: I waited before speaking, your Honor, because the Stenographer was marking the exhibit, but I do wish to protest against the recital of testimony that I contend was not in the record. I respectfully 296
submit there is no evidence that this gun was found an hour after the crime was committed.

The Court: The testimony speaks for itself. The Jury determines the facts.

Q. On the 8th of February, 1947, were you present in the District Attorney's office of Bronx County? A. I was.

Q. Were you present when questions were asked by Chief Assistant District Attorney Ryan of the defendant Haughton? A. I was.

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson. 297

Q. Detective Holt, what time did you get to the liquor store that night? A. I should say about six twenty.

Q. Who was there when you got there? A. There was quite a number of police officers there.

Q. Was the sergeant that testified? A. Sergeant Hess was there.

Q. What is his name? A. Hess, H-e-s-s.

Q. Do you know him? A. I do.

Q. Is he from your precinct? A. Yes, he is.

Q. And he was there already? A. Yes, he was.

Q. And was Detective Plate there? A. No, Detective Plate wasn't there at that time.

Q. Were you there when the pictures were taken? A. I was outside the store. We were ordered out of the store.

Q. Who ordered you out? A. I believe it was Captain Armstrong.

Q. Did he take over; was he the officer in
299 charge? A. No. We had a higher ranking officer than him. Assistant Chief O'Connor was on the scene also.

Q. Have you been on this investigation since it started? A. I have.

Q. That is since December 13th, is that right? A. It is.

Q. Was there another detective with Detective Burke on the night of December 13th? A. No, there wasn't.

Q. Was there another detective on the plant with him? A. There was a detective assigned, but he wasn't present at the scene.

Q. Was he present shortly after? A. He was. I saw him there.

300 Q. And was he a detective from the 48th too? A. He was.

Q. And what was his name? A. Detective Clifford Rosensteel.

Q. Now, you had a conversation, did you not, with the proprietor of the place, Richard Shaw? A. I did.

Q. As soon as you got there did you have a talk with him? A. No. I went back and I looked

at Detective Burke and I looked around and then I went back to the counter.

Q. Then you spoke with Shaw? A. I did.

Q. And did you ask him the description of the persons— A. I did.

Q. —that he claimed came in, and what did he say to you? A. The description he gave?

Q. Yes, the description. A. May I look at the notes?

Q. When were those notes made? A. They were made that night.

Q. Are these the original notes that you have? A. They are. 302

Q. Well, let us have the description from your original notes. A. Number one five foot five, 145 pounds, thirty-five years of age, light skinned, small mustache, tan, dirty polo coat. Number 2, five, ten, age unknown, five, ten height, slim build, 160 pounds, dark skinned, black overcoat. Then on the following day——

Q. Now, just a minute, Detective. This was the description you got on December 13th, is that right? A. It was.

Q. And you were the first detective to question him? A. I was.

Q. Now, what you have given us is the description as the clerk told you? A. That's right. 303

The Court: You mean Shaw.

Q. The clerk, was it the proprietor or a clerk? A. His wife owns the store.

Q. Who was this fellow that gave you that description? A. Richard Shaw.

Q. Richard Shaw and others spoke to him after that, is that correct? A. Others had spoken to him.

304 *James Holt—For People—Cross.*

Q. Now, you say, the following day did you have a talk about the description? A. I did.

Q. What description did he tell you the following day? A. What I have marked here, twelve, fourteen, he told me he had—the second man had black pants with stripes and I found that on December 14th.

Q. On December 13th when you spoke to him, he said one was light? A. Number one, light skinned.

Q. Was light and the other was dark— A. Yes.

305 Q. —is that correct? Now, thereafter did you interview people who were suspected of this crime? A. We brought quite a few men in.

Q. Did you interview them? A. I interviewed some.

Q. Did you happen to interview a Napoleon Mitchell? A. I don't recall the name.

Q. Did you happen to interview a defendant by the name of Hill?

The Court: A defendant or a man?

Q. Withdrawn. Did you happen to bring in a person by the name of Hill? A. That I don't recall either.

306 Q. Well, you tell us the ones you brought in, charged with this crime. A. I have the names of a few that we went to.

Q. You tell us from your records whom you brought in. A. I haven't a complete record of all the ones I questioned.

Q. Well, give us the record you have. A. Well, on January 11th I went to Jersey City, where we had been informed there had been hold-

ups committed over in Jersey and I interviewed a Leroy Nelson and a William Bellinger and they told me they had not been near The Bronx on December 13th.

Q. That ended your investigation? A. We checked on them and we found out they had been telling the truth; they had been in Jersey.

Q. Did you bring those men to New York? A. I brought pictures.

Q. To New York? A. I did.

Q. And did you have Mr. Shaw look at the pictures? A. He did.

Q. And what did he say about them? A. They 308
were not the men.

Q. Now, who else did you interrogate? A. That's all the listing I have here now.

Q. Those are the only two men? A. That's all, but there were others that I have made out a report in the Police Department. There is a report shown on the Police Department records, the men that were brought to the squad and were interviewed by myself and were confronted by Mr. Shaw.

Q. Now, were there five defendants in The Bronx County Jail that you and other police officers interviewed with respect to this crime? A. There were.

Q. And were there two of the five defendants 309
in The Bronx County Jail identified by Mr. Shaw, the clerk? A. Not that I know of.

Q. Were you present when Mr. Shaw, the clerk, identified these two?

Mr. Foley: I object to that, if your Honor pleases. There is no testimony of that kind when we identified them.

Mr. Wilkinson: Withdrawn.

The Court: Objection sustained.

Mr. Wilkinson: Withdrawn.

Q. Do you know of these five defendants who were picked up, two of them were charged with this crime——

Mr. Foley: I object, if your Honor pleases. There is no evidence or record that anybody has ever been charged——

Mr. Wilkinson: I haven't finished the question.

311 Mr. Foley: It has gone far enough.

The Court: I will sustain the objection at this time. Are you going to be some time with the witness?

Mr. Wilkinson: I think so.

The Court: Then it is time for lunch. You are admonished by the Court not to discuss the case. Form no opinion as to the guilt or innocence of the defendant until the matter is submitted to you by me. Wait upstairs, please, for the attendants to take you to lunch. Thank you.

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(After lunch recess.)

(The Jurors were called individually by name and each answered.)

JAMES HOLT, witness for The People, resuming, testified as follows:

Cross-examination by Mr. Wilkinson (continued).

Q. Detective Holt, did you discuss this case with anyone during the luncheon recess? A. I did.

Q. With whom? A. Mr. Foley. 314

Q. Do you have those records that you had before the recess? A. No, I didn't obtain them.

Q. But you did have some records with you, did you not? A. Just my memorandum book.

Q. Do you have that now? (The Witness produces a book.)

Q. May we see it, please? (The Witness hands book to Mr. Wilkinson.)

Mr. Wilkinson: Will your Honor excuse me?

The Court: The record will disclose that the witness handed to the attorney for the defendant the paper used to refresh his recollection. 315

(Messrs. Wilkinson, Fleischman, McDonough and Ehrman look at the book.)

Q. Thank you. Now, during your investigation, Detective Holt, did you at any time question a person by the name of Eddie Mills? A. Eddie Mills? No, I don't believe I did.

Q. Arthur Moore? A. Arthur Moore? No.

Q. John Sterns? A. No, I did not.

Q. John Earl? A. No, I did not.

Q. Perry, first name unknown? A. No, I did not.

Q. You didn't know any of those men at all? A. I knew that they had been arrested for a previous crime, but I didn't question them.

The Court: Keep your voice up.

The Witness: I knew they had been arrested for a previous crime, but I didn't question them.

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Q. Well, do you know that they had been questioned relative to this crime? A. I know, yes.

Q. And do you know that two of them, Eddie Mills and Arthur Moore, were identified in connection with this crime?

Mr. Foley: I object, if your Honor pleases. That question is based upon nothing in evidence or in fact.

The Court: Sustained.

Q. Well, do you know that Eddie Mills and Arthur Moore——

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The Court: Did you ever talk to them, to Mills or Moore?

The Witness: No, I never questioned them relative to the Burke case.

Q. But you were in the District Attorney's office when they were being questioned, were you not? A. I was at different times.

Q. And did you see Eddie Mills and Arthur Moore in the District Attorney's office? A. Well, I saw them all together at different times.

Q. And did you see Napoleon Mitchell in the District Attorney's office? A. No, I don't recall his name.

Q. Do you recall ever seeing Napoleon Mitchell? A. No, I don't think I ever saw him.

Q. Well, were there other colored boys in the District Attorney's office when Mills and Moore were being questioned? A. No, I don't think there were. I really couldn't say.

Q. Well, do you know how many persons were 320
in the District Attorney's office at the time Mills and Moore were being questioned? A. No, I couldn't say that.

The Court: Were you present at any time Mills or Moore was questioned?

The Witness: Well, I was in and out of the office.

The Court: Were you present when they were questioned?

The Witness: No, I wasn't there when they were questioned.

The Court: Proceed.

Q. How many times would you say you saw 321
them in the District Attorney's office? A. Oh, I would say about three or four times. That's all I saw them.

Q. And do you know that they were being questioned relative to this crime? A. Yes, I heard that they were.

Q. And do you know that they are not in Bronx County at the present time? A. No, I don't know where they are.

Q. Well, have you heard that they were sent away from Bronx County before the commencement of this trial? A. Well, I have heard that they were sentenced, but I don't know whether they were sent away yet or not.

Q. Well, what was the name of the detective that had the Mills and Moore case? A. I believe that was Detective Foden of the 41st Squad.

Q. And Foden worked on this case then, did he not? A. No. I wasn't assigned in that case. This Moore and Haughton case do you mean, Counsellor?

323 Q. Yes. A. Yes, he was working.

Q. Foden worked on this case? A. Yes, that's right.

Q. Is he a partner of yours? A. No, he is not.

Q. Is he working in the same squad with you? A. No, he does not.

Q. What squad is he attached to? A. The 41st Squad, Simpson Street.

Q. And do you know whether statements were taken from Mills and Moore regarding this particular case, the Ray's Liquor Store hold-up? A. I don't know whether statements were taken.

Q. Were you present when the clerk of the liquor store viewed Moore and Mills? A. No, I was not.

324 Q. Well, do you know whether the clerk of the liquor store was in the District Attorney's office to identify Mills and Moore? A. I believe he was.

Q. And do you know that the clerk of the liquor store identified Mills and Moore?

Mr. Foley: I object, if your Honor pleases, and I ask the Court to admonish

Counsel against asking that question in that form. It is not based on fact or on anything in the evidence.

The Court: Overruled. He may ask whether he knows. Do you know? Yes or no. Just answer yes or no.

The Witness: I beg your pardon?

The Court: I didn't hear you. Repeat the question.

(The Court Reporter reads the last question as follows: "Q. And do you know that the clerk of the liquor store identified Mills and Moore?")

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Mr. Foley: May I object again to the form of it? I request that it be asked whether he did, not that he did.

The Court: I will adopt that suggestion.

Mr. Wilkinson: I press the question first, sir.

The Court: I will sustain the objection in that form.

Mr. Wilkinson: The question is in proper form, I respectfully submit.

The Court: The Court has ruled.

Mr. Wilkinson: I respectfully except from the Court's ruling.

The Court: Do you know whether he did or not?

327

The Witness: I wasn't present when he was confronted with them.

Q. Well, do you know whether the clerk did identify them or not? A. That I couldn't—I don't know.

Q. And were you also present when John Sterns and John Earl were being questioned in the District Attorney's office? A. No, I was not.

Q. Did you at any time see John Sterns and John Earl in the District Attorney's office? A. I saw them at different times. About three or four times I saw them in the District Attorney's office.

Q. And what was the name of the detective that arrested them? A. Detective Foden was connected with that case.

Q. And were those two men questioned relative to this liquor store? A. Not in my presence, Counsellor.

Q. Well, do you know whether they were or not? A. I had heard that they were questioned
329 relative to it.

Q. And do you know if they were being identified by the clerk, Mr. Shaw? A. No, I don't know that.

Q. Now, the records that you had here this morning and that you have just shown us are not the complete records on this case, are they? A. No, they are not.

Q. And you have additional records? A. The Police Department records.

Q. And are they known by any special number or name? A. Yes.

Q. What are they known as? A. There is a D.D. 4. That is a white sheet of paper with head-
330 ings on the top and that is the start of the case. Anything that follows after that, any information follows after that appears on a D.D. 5, a blue or yellow slip of paper, which five copies are made of.

Q. And do you have copies of those records with you? A. I haven't them with me. No, I haven't.

Q. Were those records made by you? A. Not all of that.

Q. Well, those records show exactly how many persons you interrogated with reference to this crime? A. They should, yes.

Q. And you are unable to tell us now exactly how many persons you interrogated with reference to this crime? A. No, I really couldn't say.

Q. Without those records? A. That's right, yes.

Q. And are those records available to you at the police station? A. I believe the 48th Squad records are over here in the District Attorney's 332 office.

Q. The District Attorney's office has them now? A. Yes, they have.

Mr. Wilkinson: May I ask the District Attorney to produce those records?

Mr. Foley: The D.D. 4 and the D.D. 5?

Mr. Wilkinson: Yes.

Mr. Foley: Very glad to.

Mr. Wilkinson: May we defer any further questioning until we get the records?

The Court: They will be here in a few minutes, I assume. Can't you go on with somthing else?

Mr. Wilkinson: We wanted to examine 333 those records first, sir.

The Court: Have you any other questions? Well, all right.

Mr. Foley: Those are all of the D.D. 4s and D.D. 5s in this case of all officers, which are now handed to Defense Counsel.

The Court: All officers?

Mr. Foley: All officers. They are not separated by us.

Mr. Wilkinson: If the Court pleases, I note that the record handed to us has many, many records. The reports are quite voluminous.

The Court: You shouldn't complain about that.

Mr. Wilkinson: May we ask for a recess at this time?

The Court: Oh, no. Take what you need for this witness. You will have time afterwards for investigation with respect to the rest of them.

Mr. Wilkinson: We need time even as to these.

The Court: Not with respect to one witness.

Mr. Wilkinson: With respect to this witness. We are on cross-examination.

Mr. Fleischman: There is a whole, thick file.

The Court: That file contains, as I am informed, the reports of all officers involved in the case.

Mr. Wilkinson: That's right.

The Court: How many pages affect this man?

Mr. Foley: Perhaps this officer could find his own with some readiness.

The Court: It isn't that I don't want to accommodate you, but by looking at these records, I would have to adjourn for the day and that I wouldn't want to do.

Mr. Wilkinson: I respectfully submit if we had at least ten minutes to go over them, we should be able to pick out what we want.

I want the Court to understand these records were in the custody of the District Attorney and this is the first opportunity we have had of looking at them. They are police records.

The Court: That makes no difference what they are. They have been handed to you by the District Attorney.

Mr. Wilkinson: Yes, but we haven't had the opportunity of looking at them.

The Court: I don't want to recess for the day to have you look over a lot of papers.

Mr. Wilkinson: No. I assure the Court in ten minutes we should be able to look them 338
over.

The Court: I will be glad to give you ten minutes. Step upstairs for ten minutes.

(After a short recess.)

Mr. Wilkinson: Now, if the Court please, we have some D.D. 4s and D.D. 5s of the Police Department relative to Detective James Holt. I want the record to indicate that a further examination of the D.D. 4s and 5s that are in the file which the District Attorney has, was denied us.

Mr. Foley: I have felt at this time the only proper questions that might be asked of this witness from the records are his own records, not those of other policemen in the 339
department, which are filed there.

The Court: Proceed.

Mr. Foley: And they are available to the defense at all times to question any witness who appears upon the stand.

The Court: My understanding is they were given to you before.

Mr. Foley: They were, all of them.

Mr. Wilkinson: We were only permitted to see the ones with respect to this detective, but now we would like to ask the Court to have these records deposited with the Court so that we may view them and use them subsequently.

The Court: The District Attorney has indicated they will be available to you for any witness.

Mr. Foley: At any time. It was my understanding, your Honor, that you wanted these records produced here so that they might find those of Detective Holt. These
341 records are available to them at all times to question any witness who appears on the stand.

The Court: Proceed.

By Mr. Wilkinson.

Q. Now, Detective Holt, from time to time you made various reports on D.D. 4s and D.D. 5s— A. I did.

Q. —is that correct, and you also listed in those reports names and addresses of people that you apprehended? A. Not myself. Some I apprehended. Others were brought in by other mem-
342 bers of the Police Department.

Q. I see, and although some of those reports were signed by you, there may be names there that you did not apprehend yourself, is that correct? A. That's true, yes, sir.

Q. And these persons——

The Court: When you say apprehended, do you mean brought in for investigation?

The Witness: Brought in. There are some I brought in; some I didn't.

The Court: Proceed.

Q. Did you interrogate these people yourself? A. Not all of them.

Q. Did you call in the Assistant District Attorney on them? A. No, we did not.

Q. Did you call in the Assistant District Attorney on any of them? A. No, we did not.

Mr. Wilkinson: No further questions.

Mr. Fleischman: No further questions. 344

Redirect examination by Mr. Foley.

Q. Officer Holt, you have testified that People's Exhibit 1 was turned over to Detective Houston or the Ballistic Bureau by you on the night of December 13th in the store. A. I did.

Q. Did Detective Houston break the gun and examine it in your presence? A. He did.

Q. What was the condition of this gun, People's Exhibit 1? A. The condition was all six shells had been fired.

Q. And the six shells remained in the chamber? A. They were.

Q. They don't eject automatically? A. They don't. 345

Q. You also testified that People's Exhibit 11 in evidence, that is the other gun, was turned over to the custody of Detective Butts by you on that same occasion? A. It was.

Q. Did he break this gun and examine it in your presence? A. He did.

Q. What was its condition? A. The six shots contained in that gun had not been fired.

Q. It was fully loaded? A. Yes, sir.

Q. With respect to people brought in for questioning, either by you or your fellow officers, were there a great many of them? A. There were.

Q. Did you question everybody who came to your attention who was charged with a hold-up or possession of a gun, every colored man, from the time of the Burke killing on?

Mr. Wilkinson: I object to the form of the question.

The Court: Sustained.

Mr. Foley: That is all.

Mr. Wilkinson: No further questions.

The Court: That is all.

(Witness excused.)

Mr. Foley: This witness, your Honor, has produced the records that were requested this morning concerning the registration of the dead officer's gun and he was seated in court by consent, your Honor.

PETER J. COYLE, a witness in behalf of The People, having been first duly sworn, stated that he was a patrolman in the Police Department of the City of New York, shield 2061, assigned to the Bureau of Information, Police Headquarters, attached to the 18th Division, and testified as follows:

Direct examination by Mr. Foley.

Mr. Foley: This is the officer with the records. The defense requested it. I waive examination.

The Court: This is the man you requested, Mr. Wilkinson.

Mr. Ehrman: Your Honor please, I believe this witness should be excluded and Officer Hess should testify.

The Court: I can't hear you.

Mr. Ehrman: I say I believe Officer Hess should testify.

The Court: I still can't hear you.

Mr. Ehrman: I believe that Officer Hess should testify as to the records, not this witness, because Officer Hess was under cross-examination when this question came up. 350

The Court: My understanding was you finished with Officer Hess and asked them to get the records here.

Mr. Ehrman: I don't recall which officer it was, but the question of the date.

The Court: Officer Hess was the sergeant. He wasn't the man you requested. Dinan.

Mr. Ehrman: Dinan, that's right.

The Court: Do you want Dinan back?

Mr. Ehrman: Yes, sir.

The Court: You didn't indicate that. You asked for the production of certain papers and records and the prosecution presented them.

Mr. Ehrman: By Officer Dinan. 351

The Court: Oh, no.

Mr. Foley: Your Honor pleases, this man is from the Police Department and he is in charge of the records.

The Court: Then you conduct the examination.

Mr. Foley: Thank you.

The Court: If you want Detective Dinan back for further cross-examination, indicate it now.

Mr. Foley: He is here, your Honor.

The Court: Proceed.

By Mr. Foley.

Q. Officer Coyle, did you say you were attached to what bureau? A. Bureau of Information.

Q. Amongst your duties is there that of keeping track of those records of the numbers of the service revolvers and other revolvers possessed
353 by policemen? A. Yes, sir.

Q. Have you at our request produced your records of the numbers of the revolvers that were known to belong to Detective Burke? A. Yes, sir.

Q. How many have you? A. Two of them.

Q. Is there one of them a thirty-eight? A. Yes, sir.

Q. What is the number recorded of the Smith and Wesson thirty-eight revolver? A. Number 632069.

Q. 632069? A. Yes, sir.

Mr. Foley: May I identify the thirty-eight
354 for the record as People's Exhibit 1 in evidence?

Q. I now intend to refer to People's Exhibit 11 in evidence. What is the make of the other gun recorded for Detective Burke? A. A Spanish thirty-two long.

Q. And— A. P.A.C. before the Spanish.

Q. What is the number? A. 186463.

Q. 186463? A. Right.

Q. Thank you. Do either of those cars bear dates on which the entries were made? A. Yes, sir, on the Smith and Wesson.

Q. This is People's Exhibit 1. A. We have a date on the back here. That was rechecked on February 28th forty-two.

Q. And the other one? A. There is no check on the other one. That means it has been in there long before they started to check them up in forty-two.

Q. There is no date upon the record? A. No date.

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Mr. Ehrman: I move to strike out the balance of the answer, leave just that much that there was no record made as to the date of issue or whatever is showing there.

The Court: I think you misunderstood him. Denied.

Mr. Ehrman: Exception.

Q. At present, when an officer enters a new gun upon his record, what is done on the card? A. The card is sent down to the Bureau of Information and I handle it then and put a stamp, the date we got it.

Q. Every gun that has been registered since 357
that system was put in effect in the Police Department has a record which bears a stamp upon it? A. Yes.

Mr. Wilkinson: I object to that, calling for a conclusion which he is not competent to state.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. You are in charge of this bureau? A. Yes, sir.

Q. And of those records? A. Yes, sir.

Q. When was that system instituted? A. Around 1937.

Q. And this card which you hold in your hand, which refers to the recorded number of People's Exhibit 11, the Spanish gun, was filled out and put into your files before that date? A. Yes, sir.

Mr. Wilkinson: I object to it as leading.

Mr. Foley: Your witness.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Cross-examination by Mr. Ehrman.

Q. May I see the card, Officer? A. Yes; sure. (The Witness hands card to Mr. Ehrman.)

Q. Are you testifying as to dates from memory or from these cards as to dates of issue? A. There is no date of issue there.

Q. You gave us a date when the Smith and Wesson gun was issued to Detective Burke, is that right? A. No.

Q. No? Am I correct that you gave— A. I couldn't give you no date on any of the guns.

Cross-examination by Mr. Fleischman.

Q. Now, Officer, can you tell us when the Smith and Wesson gun was registered? A. No, I cannot.

Q. Can you tell us when the T.A.C. Spanish— A. I cannot.

Q. —revolver was registered? You can't tell us if it was registered a week ago, can you? A. I am sure it wasn't.

Q. What makes you sure it wasn't? A. Because I stamped every gun for the last couple of years back that comes into that office.

Q. Thus these guns must have been registered prior to the stamping system, is that right? A. Right.

The Court: Answer, please.

The Witness: Yes, sir.

362 Q. How long have you been in charge of registration for these revolvers for the Police Department? A. I have been in charge of it steadily for the last two years.

Q. And the system of stamping the dates on them is something that originated only during the last two years, is that correct? A. No. It has been originated, from what I understand, since 1937.

Q. Then if these guns were registered prior, after 1937 there would be a date on them, is that correct? A. Correct.

Q. So both of these guns must have been registered prior to 193., is that correct? A. Right, yes, sir.

363 Q. Is it customary of your knowledge for members of the Police Department to have more than one revolver? A. Well, very seldom they have more than one revolver.

Q. You would say that is an unusual situation? A. Well, it is.

Mr. Fleischman: That is all.

Redirect examination by Mr. Foley.

Q. Officer Coyle, you testified as to a date, 1942, and that was on the card referring to the thirty-eight, People's Exhibit 1; was that a date of issuance or was it a recheck date? A. That revolver was in the Bureau of Information before that time and it was rechecked on that date.

Q. Thank you. I think that is all. Thank you very much.

(Witness excused.)

The Court: Next witness.

Mr. Foley: Detective Foden.

WALTER G. FODEN, a witness in behalf of The People, having been first duly sworn, stated that he was a detective in the Police Department of the City of New York, shield 850, attached to the 41st Squad, and testified as follows:

Direct examination by Mr. Foley.

Q. Officer Foden, were you a police officer with the same assignment, rank and shield number that you have given us here, employed by the City of New York on the 13th day of December, 1946? A. I was.

Q. Let me get it straight, please. Are you in Homicide or the 41st? A. 41st Squad, sir.

Q. Did you on that date proceed to Webster Avenue, in the County of Bronx, premises at 1439? A. No, sir, I was not there that night, sir.

Q. Did you later on become involved in the investigation of the killing of Detective Burke? A. I did.

Q. When did you first enter on that investigation? A. December 15th, 1946.

Q. I want to direct your attention to the 8th day of February, 1947. Were you on the early morning of that day in the District Attorney's office in Bronx County? A. I was.

Q. And did you go from that office in the company of certain other men? A. I did.

Q. Who were they? A. Assistant District Attorney, Mr. Breslin, Mr. Haran, County Detective, 368
Detective Thomas Farrell, Arthur Clark and myself. We left the District Attorney's office about the hour of twelve fifty-five a.m.

Q. Where did you go? A. To 135th Street and Eighth Avenue.

Q. In the County of New York? A. In the County of New York.

Q. Where did you go there? A. I stood on the southeast corner for about a period of twenty minutes.

Q. Did you enter an apartment down there? A. I did, a little later.

Q. Well, when you did, whose apartment was it? A. One Otis Banks known as Mack.

Q. What did you do in his apartment? A. I 369
searched his apartment in his presence and in the presence of the officers I just mentioned.

Q. Did you find anything at that time? A. No, sir, I did not.

Q. What did you do then? A. I brought Otis Banks to the District Attorney's office in the Borough and County of Bronx and I confronted him with Mr. Breslin and the defendant Moore.

Q. Which one is the defendant Moore? A. The defendant on the left, my left.

Q. As you face him? A. Yes, sir.

Q. Was there a conversation had with Moore by anybody in your presence? A. I conducted the questioning then.

Q. Tell me what was said by you and by Moore.

Mr. Fleischman: If your Honor pleases, at this time I object to any conversation between Moore and this detective on the ground that it is not binding on the defendant Lester Haughton.

371 The Court: I so instruct the jury at this time that any testimony about to be offered with respect to a conversation or statements alleged to have been made by the defendant Moore is not received in evidence as to the other defendant. It is only received at this time as to the defendant Moore.

A. I then asked Mr. Banks; I said: "Is this the fellow I was telling you about or do you still believe I am kidding?" So he said: "No, that is Moore." I then turned to Moore and told him: "He says he doesn't know anything at all about this gun. Can you refresh his memory?"

372 The defendant Moore then stated: "Look, fella," directing his questions to Banks, "I am in trouble. Don't you get in trouble. All that they want from you is the gun. Tell them where the gun is." Banks then turned to me and he stated: "All right, I will get it." I stated, I asked him: "Where is the gun?" and he said: "I gave it to Ashew." I said: "Where is Ashew?" He said:

"On Seventh Avenue." I said: "When did you give him the gun?" He said: "A couple of weeks ago." I said: "Why did you give him the gun?" He said: "I needed some money."

Mr. Wilkinson: I object to this conversation.

The Court: Sustained.

Q. All right, Officer. After that conversation was concluded, did you go anywhere with anybody? A. I did.

Q. Who was it and where did you go? A. I went with Mr. Breslin, Mr. Haran, Detective Tracy, Otis Banks, myself, went to 2004 Seventh Avenue, apartment number nine. 374

Mr. Wilkinson: I object to anything that transpired there on this visit, not binding on the defendant Moore.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

The Witness: Mr. Banks knocked on the door at my direction and when an answer was responded, somebody inside said: "Who is there?"

Mr. Wilkinson: I object to this as hearsay. 375

The Court: Sustained.

Q. Don't tell us what was said. Somebody opened the door and you went in?

Mr. Wilkinson: I object to the District Attorney leading the witness.

The Court: Proceed. He is trying to avoid your first objection.

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Mr. Foley: Trying to direct his attention and have him avoid objectionable remarks.

The Court: Sustained. Did you enter the apartment?

The Witness: I did.

The Court: Proceed, Mr. Foley.

Q. Did you have a conversation with the man who was in that apartment? A. I did.

Q. What was his name? A. His name is Ashew.

Q. And after you had this conversation with Ashew, what happened? A. Ashew directed my
377 attention——

Mr. Wilkinson: I object to that and I move to strike it out.

The Court: Objection sustained. Did you find anything?

The Witness: I opened a bureau drawer and in the bottom bureau drawer——

The Court: Wait a minute. What did you find? Answer questions.

The Witness: A forty-five caliber automatic pistol.

Q. Did you take the pistol from the drawer? A.
378 I did.

Q. And did you bring Banks and Ashew back to The Bronx with you? A. I did.

Q. When you came back to The Bronx with Banks and Ashew and the gun you found there, did you see the defendant Moore? A. I did.

Q. Did you have a conversation with him? A. I did.

Q. What did you say to him and what did he say to you? A. I asked the defendant——

Mr. Fleischman: Your Honor pleases, at this time I wish to again note my objection on the record as to any conversation between this detective and Mr. Moore on the ground it is not binding on the defendant Lester Haughton.

The Court: I repeat again, Gentlemen, this evidence is received as to the defendant Moore and not as to the defendant Haughton. Proceed.

380

Q. What did you say to Moore and what did he say to you? A. I asked the defendant Moore: "Is this the pistol that you had on December 13th?" He looked at it and said: "Yes." I then initialed the pistol W.F. and the date two eight forty-seven.

Q. Can you find the markings on it that you put on? A. It is on both sides of the barrel, scratched in.

Q. Can you find it there? A. Yes, sir, right here and right there; also on the clip here and there.

Q. Thank you.

381

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: I object to it on the grounds that The People have failed to show any connection with the defendant Moore, that the proper foundation has not been laid and it is immaterial, irrelevant and incompetent.

The Court: Overruled.

382 *Walter G. Foden—For People—Direct.*

Mr. Wilkinson: I respectfully except.

Mr. Fleischman: Your Honor pleases, I object to its introduction into evidence on the ground that there is no evidence or testimony in any way linking up the defendant Lester Haughton with this particular revolver.

The Court: Denied. This gun is received in evidence as to both defendants.

Mr. Fleischman: Exception.

(Received and marked People's Exhibit 12.)

383 Q. Can you fix the time approximately when you returned to the District Attorney's office with this gun, People's Exhibit 12, on the morning of February 8th? A. About three a.m.

Q. Did you retain custody of this gun after the conversation with Moore? A. I did.

Q. What did you do with it? A. I took this gun about seven a.m., seven thirty a.m. to headquarters, 240 Center Street, where I delivered it to Sergeant Harry Butts of the Ballistics Bureau.

Q. When did you receive it back from Butts? A. About ten thirty a.m.

Q. That same morning? A. Yes, sir.

Q. What did you do with it then? A. I returned to the 48th Precinct station house at 1925
384 Bathgate Avenue, made out a voucher for the Property Clerk's office, received the voucher number and then delivered that gun and the vouchers to the Property Clerk's office in the 42nd Precinct, 158th Street and Third Avenue.

Q. And when did you get this gun, People's Exhibit 12, from the Property Clerk? A. The next time I seen, I took that gun was on Febru-

ary 11th, I believe, the date of the Grand Jury hearing.

Q. Did you bring it with you when you testified before the Grand Jury? A. I did.

Q. What did you do with it then? A. I then returned it immediately to the Property Clerk's office.

Q. When did you again take it from the Property Clerk's office? A. About ten a.m. this date.

Q. And you have had it in your custody since you brought it from him until you brought it here? A. I have, yes, sir.

Q. Thank you. 386

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Q. You are in the 41st Squad, Detective Foden? A. That's right.

Q. Were you working on this case since it happened in December? A. No, sir; not steadily.

Q. But had you been working on it for some period of time? A. On and off; yes, sir.

Q. Interrogating people that were picked up? A. At times; yes, sir.

Q. Did you also have a talk with the clerk of this liquor store? A. Yes, sir. 387

Q. What is his name, Shaw? A. Shaw.

Q. That was the clerk, is that correct? A. He is the owner of the store.

Q. Oh, he is the owner of the store? A. I believe so; yes, sir.

Q. Did you check to see who the owner of the store was? A. No, sir; I did not.

Q. Did you interrogate an individual by the name of Napoléon Mitchell? A. No, sir; I did not.

Q. Do you know an individual by the name of Napoleon Mitchell? A. I do.

Q. Did you see him at the District Attorney's office? A. I did.

Q. In connection with this case? A. No. I believe it was in connection with another case that he was being questioned.

Q. Did you ever question him in connection with this case? A. No, sir; I did not.

389 Q. Did you talk with him at all? A. In the corridor of the District Attorney's office I did.

Q. As a result of information that Napoleon Mitchell gave you, did you not apprehend Eddie Mills and Arthur Moore? A. No, sir.

Q. Did you arrest Eddie Mills and Arthur Moore? A. No, sir; I did not.

Q. Did you know Eddie Mills, Arthur Moore and John Stearns and John Earl? A. Yes, sir.

Q. Did you have that case? A. I assisted in the investigation.

Q. Who is the detective that had that case? A. Those defendants were arrested by Patrolman Kuhner and Patrolman Statler of the 41st Precinct, and I was assigned to assist those officers

390 in the obtaining of certain evidences.

Q. Did you assist those officers? A. I did.

Q. Did you interrogate those men in connection with this crime? A. I questioned them relative to this case; yes, sir.

Q. Did any members of the District Attorney's staff question them? A. Yes, sir.

Q. Relative to this crime? A. Yes, sir.

Q. Mr. Shaw, the clerk, was he brought in to look at them? A. Yes, sir.

Q. Did he identify Mills and Moore? A. No, sir.

Q. Were you present when he was brought in? A. Yes, sir.

Q. And when was that? A. That was on December 15th; again on December 18th. I believe, also, on two later dates.

Q. That Mr. Shaw was brought in to look at them? A. That's right, sir.

Q. All right, on December 15, 1946, about what time would you say Mr. Shaw looked at them? 392
A. I would like to correct that. I believe it was the early morning about 1:00 A. M. on December 16th.

Q. Did you bring Mr. Shaw to the police station or wherever they were? A. They were in the 42nd precinct station house. Somebody else brought him there.

Q. Did he look at them then? A. He did.

Q. He didn't identify them that day? A. That's right; he did not.

Q. When was he brought back again to look at them? A. Two days later; the following Tuesday, I believe.

Q. And he was brought back to look at the same men? A. Yes, sir. 393

Q. And did he identify them then? A. He stated it was not them.

Q. That was the second time he was brought back? A. Yes, sir.

Q. The first time did he say it was not them? A. He wasn't sure. He said the general description, but he says they are not the right size or they are a little too young.

Q On December 16th? A. That's right, sir.

Q. About 1:00 o'clock in the morning? A. That's right, sir.

Q. Was there a line-up when he looked at them? A. There were several other men there too; yes, sir.

Q. How many? A. Six in all, I believe.

Q. Where was this, in a room in the 42nd Precinct? A. That's right, sir.

Q. He looked at the group of men? A. That's right, sir.

Q. And did that group include Mills, Moore,
395 Stearns and Earl? A. Starnes.

Q. Starnes, is that the name? A. Yes, sir.

Q. John Starnes? A. Yes, sir.

Q. And John Earl? A. That's right.

Q. A fellow by the name of Perry? A. That's right.

Q. Five of them? A. Yes, sir.

Q. And that comprised the group, the five of them? A. There was another one there too.

Q. What was his name? A. I don't recollect his name. I haven't got it with me.

Q. At any rate, Mr. Shaw was brought in to look at the five of them? A. That's right, sir.

Q. Did he particularly look over Mills and Moore? A. He did. He looked them all over.

396 Q. That's right, but particularly Mills and Moore? A. I can't say particularly. He looked them all over.

Q. And he said he wasn't sure? A. No. He says they are a little too young. Mills, he says, was too tall and Perry was too tall. Starnes was too small, but he says the general appearance of them.

Q. At any rate he didn't identify them on the 16th? A. That's right; he didn't identify them.

Q. But two days later you brought them back again? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Did their appearance change in the two days? A. Not that I know of.

Q. Had they been to the District Attorney's office in the two days? A. That's where they were looked at the second time, in the District Attorney's office.

Q. Then Shaw looked at the five of them again? A. That's right, sir. 398

Q. And what did he say this time? A. Same as he said on the 15th and the 16th; it was not the men.

Q. That was the second time he looked them over? A. That's right, sir.

Q. When was the third time? A. He was over in the District Attorney's office several times after that, and there were other defendants there, as well as the five just mentioned, and he seen them again.

Q. How many times after that would you say he looked them over? A. I believe a total of three or four times.

Q. After that? A. No; all together.

Q. Well, Napoleon Mitchell, was he in the District Attorney's office? A. That's where I seen him; yes, sir. 399

Q. When these five were there? A. I think one of them was there, I am not sure, at that time.

Q. Do you know that Napoleon Mitchell fingered two of these boys? Do you know what I mean by that? A. I know he was talking about these two boys.

Q. And what did he say about them? A. He was referring——

Mr. Foley: I object, if Your Honor please.

The Court: Sustained.

Q. Well, do you know that the District Attorney had information that these two boys committed this crime, Mills and Moore?

Mr. Foley: I object. Well, I withdraw the objection. Go ahead.

401

A. He did not.

Q. Do you know that Napoleon Mitchell gave him the information that these two boys had committed this crime, that is, Mills and Moore? A. No, sir; I do not know that.

Q. Do you know where Mitchell is now? A. The last I knew of him he was in the County Jail.

Q. Do you know whether he is still in the County Jail? A. I wouldn't know that, counsellor.

Q. Do you know whether Eddie Mills and Arthur Moore are still in the County Jail? A. They were sentenced a short while back. I

402 don't know if they are still there or not.

Q. Well, this is your case, Mills and Moore? A. That's right, sir. They were sentenced and my case is finished.

Q. When was your case finished? A. The early part of this month.

Q. They were sent from Bronx County? A. They were sentenced out of Bronx County Court.

Q. Were they sent out of Bronx County? A. I wouldn't know that, sir.

Q. Well, now, that was your arrest, was it not? A. That's right, sir.

Q. Don't you follow your cases through? A. After they are sentenced they go in the custody of the Department of Correction, and they handle them from there.

Q. You don't follow the cases at all? A. No, sir.

Q. Do you find out what the sentence is? A. Yes, sir. I knew the sentences.

Q. What crime were they finally sentenced on? 404
A. Assault and robbery.

Q. Were the five of those boys sentenced on assault and robbery? A. One of them was charged with 1897 of the Penal Code.

Q. Mills and Moore, did you get a disposition on them? A. Yes, I heard the disposition.

Q. Where were they sentenced to? A. I can't say that offhand, counsellor. I don't remember. One of them, I believe, went to the Reception Center of Elmira. Three of them went to State's Prison, and the fourth one, also, I believe, went to State's Prison.

Q. That was the early part of this month, is that correct? A. Yes, sir.

Q. Did you mention a fellow by the name of 405
Otis Banks? A. That's right, sir.

Q. How old a person is Otis Banks? A. About 35; 34, I believe, is his exact age.

Q. Do you know where Otis Banks lives? A. On 135th Street, West. 134th Street. His exact address is 128 West 134th Street, Apartment 1-E.

Q. And Ashew? A. Ashew, 2004 Seventh Avenue, Apartment No. 9.

Q. And are they both residing at their addresses now? A. The last I knew of these men they were held as material witnesses by the District Attorney's office.

Q. When is the last time you saw them? A. On December 8th.

Q. Have you seen either of those men since? A. I seen Otis Banks once since then.

Q. Where did you see him? A. In the District Attorney's office.

407 Q. Did you talk with him there? A. I did.

Q. Did you take him from the jail over to the District Attorney's office? A. No, sir; I did not.

Q. When was the date that you saw Otis Banks in the District Attorney's office? A. It was about a week and a half ago, ten days ago. I would say, roughly, on the 14th of this month.

Q. When did you see Ashew last? A. On the 8th of February, when he was in the District Attorney's office.

Q. Is that the only time you saw him? A. That's right.

Q. And did you pick up both Banks and Ashew? A. I did.

Q. And you say they are at present in the
408 County Jail? A. I said they were last held as material witnesses.

Q. Where do they hold them as material witwitnesses? A. Sometimes in the Bronx County Jail.

Q. Where do they hold them at other times? A. Sometimes in the Tombs.

Q. Where are these men held? A. I believe they are in the County Jail; I don't know.

Q. Well, did you see these men today? A. No, sir; I did not.

Q. Within the last week? A. No, sir.

Q. You say you picked up this gun from the Property Clerk's office? A. This morning; yes, sir.

Q. When was the last time you had it in your possession? A. The day of the Grand Jury hearing.

Q. How long ago was that? A. That was, I believe, on the 11th day of February.

Q. You haven't had it since then? A. No, sir.

Q. Were you present at the ballistics office when the gun was turned over to Sergeant Butts? A. I was present; yes, sir. 410

Q. And did you give it to him? A. I did.

Q. How long did he have it? A. From about 8:30 A. M., until about 10:30 A. M.

Q. What type of gun is that? A. That's a .45 Colt automatic pistol, 1911 model.

Q. Now, you mentioned that you showed the gun to the defendant Moore? A. I did.

Q. When was that? A. That was when I returned about 3:00 A. M. on February 8, 1947.

Q. Where was that, at the District Attorney's office? A. It was.

Q. Who was present then? A. Mr. Ryan, Mr. Foley, Detective Green, Detective Holt, Haughton. 411

Q. Who? A. The defendant Haughton, Leslie Haughton. I think Mr. Delagi; Mr. Bottiglieri.

Q. Who are those men, in the District Attorney's office? A. Assistant District Attorneys, Bronx County; and there was a stenographer there, too.

Q. And how many detectives were there? A. Detective Green and Detective Holt.

412 Q. And yourself? A. And myself; yes, sir.

Q. Any other detectives or police officers of any kind? A. Not in the room at that time.

Q. Where were they? A. All in the outside corridor or in other rooms.

Q. How many were there? A. There was quite a few. I couldn't say exactly.

Q. You can judge numbers pretty well, can't you? A. There must have been twenty officers there.

Q. About 20 police officers? A. That's right,
413 and different assistants.

Q. Were these uniformed officers? A. No; detectives mostly. There were, I believe, two uniformed men there.

Mr. Wilkinson: No further questions.
Mr. Foley: That's all. Thank you.
(Witness excused.)

SAMUEL W. HUSTON, Detective, Shield No. 282, assigned to the Ballistic Bureau, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, tes-
414 tified as follows:

Direct examination by Mr. Foley.

Q. Officer Huston, were you a police officer employed by the City of New York, with the same rank and assignment and shield number that you have just given us, on the 13th of December, 1946? A. Yes, sir.

Q. And did you, in the regular course of your duties on the evening of that day, repair to premises 1439 Webster Avenue, in the County of the Bronx? A. Yes, sir.

Q. At about what time did you get there? A. At about 6:50 or 7:00 P. M.

Q. You say you are assigned to the Ballistic Bureau? A. Yes, sir.

Q. What is ballistics? A. Ballistics is the study of firearms and their propellants and projectiles.

Q. In the course of your duties and assignment to the Ballistic Bureau, what did you do after you reported to the scene on that evening? A. After I reported to the scene I made an examination of the premises with respect to bullets and bullet holes, and I found several pieces and several bullets.

Q. What pieces, shells or bullets did you find personally?

The Witness: I will have to refer to my notes.

The Court: You may.

A. I found three .45 caliber bullets; seven pieces of copper case.

Mr. Foley: Let me interrupt you there, officer.

Q. When you say copper case, what do you mean? A. I mean the copper that is encased around the lead core. The whole of that is a bullet.

Q. The lead core with the copper cover or casing constitutes a bullet? A. Yes, sir.

Q. And that is the projectile part which is discharged from the shell by the propeller? A. Yes, sir.

Q. And when you say casing or fragment of casing, that is what you refer to? A. Yes, sir.

Q. The first that I have is that you found three .45 caliber bullets; that means complete bullets? A. Yes, sir.

Q. And then? A. Then I found two pieces of copper case, and then two more pieces of copper case. I will have to go through these and not total them up. Then I found some discharged shells. I found four .45 caliber discharged shells. I found some lead bullets. I found four .38 caliber deformed lead bullets.

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Mr. Fleischman: Your Honor, will you have the stenographer read that last answer. I don't believe I heard it.

(The answer referred to read as follows: "Then I found some discharged shells. I found four .45 caliber discharged shells. I found some lead bullets. I found four .38 caliber deformed lead bullets.")

The Witness: That's five .38 caliber deformed lead bullets.

420 Q. Did you receive any bullets, shells or pieces of casing or fragments of bullets from anybody while you were in the premises? A. Yes, sir.

Q. What did you receive and from whom? A. Detective Holt gave me two .45 caliber discharged shells and one piece of .45 caliber casing.

Q. Now, I show you People's Exhibit No. 9 and ask you whether that is one of the .45 shells the officer gave you?

Mr. Foley: Did you say it was Officer Holt?
The Witness: Yes, sir.

A. Yes, sir; this is one of them.

Mr. Foley: That's People's Exhibit No. 9.

Q. I show you People's Exhibit No. 8 in evidence and ask you whether you can identify that as one of the bullets given to you by Officer Holt on that night? A. Yes, sir; this is one of them.

Mr. Foley: That's People's Exhibit No. 8.

422

Q. And People's Exhibit No. 10, can you tell me whether this is the piece of casing that was given to you by Holt, according to your testimony? A. Yes, sir.

Q. Now, Officer Holt had given you these two shells and this piece of case, People's Exhibits 8 and 9 as to the shells, and 10 as to the case. What did you do with them? A. I kept them in my possession and gave them to Sergeant Butts the morning of December 14, 1946.

Q. Sergeant Butts is the officer in charge of the Ballistic Bureau? A. Yes, sir; he is my commanding officer.

Q. Now, I show you People's Exhibit No. 1 and ask you whether you have seen it before? A. 423
Yes, sir.

Q. Where did you first see it? A. The evening of December 13, 1946.

Q. In the premises on Webster Avenue? A. 1439 Webster Avenue.

Q. And was that gun there on that evening delivered to your custody? A. Yes, sir.

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Q. What did you do with it? A. I also took that and kept it in my possession until the following morning and gave it to Sergeant Butts.

Q. In the Ballistic Bureau? A. Yes, sir.

Q. And was the place that you delivered it to downtown in the Ballistic Bureau? A. Yes, sir.

Q. Now, I show you People's Exhibit No. 11 in evidence and ask you whether you have seen that gun before? A. Yes, sir.

Q. Where did you first see it? A. The first time I saw this was the evening of December 13, 1946, in the premises 1439 Webster Avenue.

425 Q. And was it delivered there into your custody? A. Yes, sir.

Q. What did you do with it? A. I also delivered that to Sergeant Butts the following morning in the Ballistic Bureau.

Q. Now, have you with you the shells, pieces of casing, entire bullets and deformed lead bullets of which you spoke in your prior testimony? A. Yes, sir.

Q. Will you produce them, please? A. Yes, sir.

(Witness produces various envelopes.)

Q. Were all of those objects which you have produced found by you on the same day? A. No, sir.

426 Q. How many were not? A. One .38 caliber deformed lead bullet and one .45 caliber discharged shell.

Q. Did you personally find the deformed lead bullet? A. Yes, sir.

Q. On what date? A. On December 17th, I believe. December 17, 1946.

Q. You were back in the premises on that date? A. Yes, sir.

Q. Where did you recover that bullet? A. That was found behind the wall, the bottom shelf, these shelves on the north side of the premises; the bottom shelf in the first section from the east end of the store.

Q. You dug it out of the wall there? A. There was a department carpenter there who broke the wall out, a portion of the wall, and I felt around and I found the bullet.

Q. The shell casing that you have referred to as having been found on a different date, did you find that personally? A. Yes, sir.

Q. Where was that? First of all, on what day did you find that? A. December 17, 1946. 428

Q. The same day on which you found the deformed lead pellet to which you referred? A. Yes, sir.

Q. Where did you find that? A. I found that on the third shelf from the top in the second section from the west end of the store, these being the shelves that are on the north side of the store, laying on the shelf behind some wine bottles; bottles of wine, rather, these being full.

Q. The west end of the store is the rear end, is it not? A. Yes, sir.

Q. The north end, or the north wall where these bottles were, would be to the right of anyone facing the rear? A. Yes, sir. 429

Q. Now, I show you People's Exhibit No. 12, and ask you whether or not the ejector on that side would throw out a spent shell to the right?

Mr. Wilkinson: I object to answering the question at this time. He has not been proved as an expert on firearms.

Mr. Foley: He can see on which side the ejector is. All right, we will save it for Sergeant Butts. I will withdraw it and ask Sergeant Butts when he is on.

Q. Now, you have produced the items that you have testified concerning. Will you take first the lead pellets and let me see them? A. The lead pellets?

The Court: Are you going through with all these exhibits?

Mr. Foley: Yes, sir.

431 The Court: I am going over until tomorrow morning. There has been a whole lot accomplished in the first day.

Mr. Foley: I think so. We have gone along very well.

The Court: All right, you will have to come back tomorrow morning.

(Witness excused.)

The Court: You are admonished by the Court not to discuss this case amongst yourselves at any time. You are to form no opinion as to the guilt or innocence of the defendants until the matter is submitted to you by me.

432 Ten-thirty, gentlemen, again tomorrow morning. You are excused until that time.

Defendants remanded.

(Whereupon, the further trial of the case was adjourned until 10:30 A. M., March 25, 1947.)

New York, March 25, 1947

(TRIAL CONTINUED.)

Appearances: As noted on title page.

The Court: I think the officer was on the stand.

Mr. Foley: Yes.

SAMUEL W. HUSTON, resumed the stand as a witness for the People, giving his shield number as 282, attached to the Ballistics Bureau, having been previously duly sworn, testified further as 434 follows:

Direct examination by Mr. Foley (continued).

Mr. Foley: Your Honor, with your permission I would like the record to show after the close of the trial day yesterday, we place at the disposal of defense counsel all the DD4s and DD5s in this case and left them with them until they indicated they had satisfied themselves and had completed their examination.

The Court: That statement is not disputed?

Mr. Fleischman: It is disputed insofar as 435 satisfying ourselves is concerned, but not disputed that we examined them.

The Court: In any event, you had them?

Mr. Fleischman: That is right.

Q. Before you left the stand last night, I had begun to discuss with you the evidence you had procured in the liquor store on Webster Avenue. I had asked about lead pellets. Let me withdraw that question. I call your attention to those

articles you found there that referred to the weapon, .45 caliber; will you start with them, please? A. Yes, sir. Do you want the bullets first or the shells first?

Q. The bullets? A. I still have to refer to my notes.

The Court: You may, to refresh your recollection.

A. On the night of December 13th I recovered three bullets.

437 The Court: Repeat that.

(The answer was repeated by the stenographer as follows: "On the night of December 13th I recovered three bullets.")

A. (Continuing) .45 full metal case bullet, marked "H," recovered on the right side of the head of Burke.

Q. You recovered that yourself? A. Yes, sir, on the floor.

Q. Let me have them, please. (Articles handed to Mr. Foley.)

Mr. Foley: I offer this in evidence.

438 Mr. Wilkinson: If the Court please, I would like to ask a few preliminary questions before the reception of this evidence.

The Court: You may.

By Mr. Wilkinson.

Q. What time did you arrive at the premises, 1439 Webster Avenue? A. About 6:50 or 6:55 P. M.

Q. That would be about ten minutes to seven? A. Yes, sir.

Q. Did you arrive at the premises with anyone? A. Yes, sir.

Q. With whom did you arrive there? A. Patrolman Brosan, assigned to us to operate as chauffeur.

Q. Do you know how many people were in the premises when you arrived there? A. No, sir, I do not.

Q. Can you estimate how many people were there? A. I can say that there were several.

Q. Would you say that there were ten? A. Yes, sir, I believe there was ten. 440

Q. Would you say that there were twenty? A. There were at least ten. I don't know how many.

Q. Were they all police officers? A. Yes, sir.

Q. Detectives? A. I believe they were, yes, sir.

Q. Uniformed men? A. Yes, sir.

Q. Were they in the premises? A. Yes, sir.

Q. That was approximately ten minutes to seven? A. Around that time, yes, sir.

Q. Do you know what time the alleged crime was committed? A. No, sir.

Q. Who was in charge of the premises when you arrived there? A. There was a uniformed sergeant there. There was several superiors from the detective division of the Bronx. 441

Q. Was there anybody in command at the time? A. Well, Inspector O'Connor was there. He is a ranking officer. I imagine he assumed command.

Q. Had photographs been taken before you arrived there? A. Yes, sir, I believe they had.

Q. Had an ambulance doctor been there before you arrived there? A. I believe that there had. I hadn't seen them.

Q. Had the Medical Examiner been there before you arrived there? A. The Medical Examiner was there when I got there.

Q. Are you able to state in what condition those premises were an hour before you got there? A. No, sir.

Q. Do you know where any of the objects you are about to testify to, in what position they were for an hour before you arrived there? A. No, sir.

Q. But there were about ten police officers there when you did arrive? A. Yes, sir.

443 Mr. Wilkinson: I am going to object to the admissibility of the evidence at this time on the ground that where these things were found, what the police officer found, is immaterial, irrelevant and incompetent. It has not been connected sufficiently for the admissibility of this evidence at this time.

Mr. Fleischman: I join with Mr. Wilkinson in his objection.

The Court: Received in evidence the same as I received the other exhibits, subject to connection.

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

The Court: This is what you call a bullet?

444 The Witness: Yes, sir.

The Court: Where did you find that?

The Witness: I found that lying on the floor on the right side of the head of Burke.

The Court: Do you want them as separate exhibits?

Mr. Foley: Some, I think, will serve everybody's convenience if they are coupled as one exhibit, as fragments; some of them alone.

The Court: Received.

(Same received in evidence and marked People's Ex. 13 of this date.)

Q. What have you next, officer? A. One .45 caliber deformed metal case bullet, marked H-1. This was recovered in an empty box stacked in the southwest corner of the rear room of the store. Directly beneath this box on the floor, I recovered one piece of copper casing, marked "H."

Q. Did you mark the first item you have referred to, the piece of bullet? A. Yes, sir, H-1.

Q. You find the markings on them now? A. 446
Yes.

Mr. Foley: I offer them as one exhibit.

Mr. Wilkinson: I make the same objection as before as to the defendant Moore.

Mr. Fleischman: The same objection on behalf of Lester Haughton.

The Court: The same ruling.

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

The Court: What does that exhibit contain?

Mr. Foley: Two pieces, deformed, .45 caliber jacketed bullet and fragment of casing. 447

The Court: May I see them?

(Articles handed to the Court.)

The Court: Received.

(Same received in evidence and marked People's Ex. 14 of this date.)

The Court: You understand we are taking the exhibits subject to further proof.

Mr. Wilkinson: Yes.
Mr. Fleischman: Yes.

Q: Proceed? A. One .45 caliber deformed, full metal cased bullet, marked H-2, recovered on the floor in the southeast corner of the rear room.

Q. Do you find the markings on the article you now hand me? A. Yes, sir.

Mr. Foley: We will offer that in evidence.

Mr. Wilkinson: I make the some objection on the same grounds on behalf of the defendant, Moore.

449 Mr. Fleischman: I make the same objection on the same grounds on behalf of the defendant, Haughton.

The Court: The same ruling.

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

The Court: Received.

(Same received in evidence and marked People's Ex. 15 of this date.)

The Court: It is called a bullet, is it?

The Witness: Yes, sir.

Q. Will you take the next one, officer? A. Two piece of copper casing, marked H-1 and H-2, were
450 recovered in a case of wine. This case of win was in the northwest corner of the main store.

Q. Were they recovered by you? A. Yes.

Q. Do you now find on those fragments the marks that you put upon them? A. Yes, sir.

Mr. Foley: I offer them in evidence as one exhibit.

(Articles handed to defense counsel.)

Mr. Wilkinson: The same objection on behalf of the defendant Moore, on the same grounds.

Mr. Fleischman: The same objection on behalf of the defendant Lester Haughton.

The Court: The same ruling. Received.

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

(Same received in evidence and marked People's Ex. 16 of this date.)

Q. Take up the next piece, please. A. Two pieces of copper casing and one lead core. The 452
two pieces of copper casings marked H-3 and H-4 and the lead core marked H.

Q. Where did you find these? A. These were recovered on the fourth shelf from the bottom of the north series in the back, in the rear, in the west end of the main store.

Q. They were recovered by you? A. Yes.

Q. When you refer to the piece of lead core, what do you mean? A. I mean these pieces of copper casing encase the lead core something similar to a finger "stall" on one of the rubber tips put on the fingers to turn pages easily. The copper casing corresponds to that. The finger corresponds to the lead core.

Q. Is this lead .45 bullet covered by copper? 453
A. Yes.

Q. Do you find the marks on these articles you put on there, now? A. Yes, sir.

Q. Is that true of this one? A. Yes.

Mr. Foley: I offer these in evidence as one exhibit.

Mr. Wilkinson: The same objection on the same grounds to their introduction in evidence, on behalf of Moore.

Mr. Fleischman: The same objection on behalf of the defendant Haughton.

The Court: That exhibit consists of three pieces?

Mr. Foley: Yes, sir.

The Court: Received.

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

(Same received in evidence and marked
455 People's Ex. 17 of this date.)

Q. I want to show you People's Ex. 13, which is apparently a deformed bullet and intact, in that it has not been split; will you please indicate to the Court and jury which part of it is the lead core and which part the jacket? A. I will show the Court first.

The Court: Just show it to the jury.

A. (Witness exhibiting same to jury) Can you see that dark place with the initial "H"? That is the lead core. If this had hit a hard object, or something or a certain thing in the way, that
456 would split this case.

Mr. Wilkinson: I will object to this.

The Court: It is not responsive. Objection sustained. Just tell what the lead core and casing are.

A. The dark inner circle is the lead core. This brighter, outer circle is the copper case.

Q. That covers the bullets from the base completely up over the nose? A. Yes, sir.

Q. Go to the next one—how about the shells? A. The shells?

Q. Yes. A. One .45 caliber discharged shell, marked H, was recovered on the floor at the head of Burke's—at Burke's head on the floor.

Q. You find a mark there, your own identifying mark on that? A. Yes.

Mr. Foley: May I have just a moment, your Honor?

The Court: Yes.

458

Q. Will you proceed and let us hear about the other shells you found there, when and where? A. A .45 caliber discharged shell, marked H-1, was recovered down at Burke's feet on the floor.

Q. Both of these, the first to which you have referred, and this one, were they recovered on the night of the 13th of December, 1946? A. Yes.

Q. Go ahead to your next one. A. A .45 caliber discharged shell, marked H-2. That shell was recovered in the southeast corner of the rear room on the floor.

Q. By you? A. By me, yes, sir.

Q. Do you find the mark H-2 on it? A. Yes, sir.

Q. The next one. A. A .45 caliber discharged 459
shell, marked H-3, was recovered on the second shelf from the top, second series from the rear of the store. These shelves are on the north side of the main store. That was marked H-3 and recovered by me.

Q. Do you find H-3 on the shell there? A. Yes.

Q. Was that also on the night of the 13th of December, 1946? A. Yes.

460 *Samuel W. Huston—For People—Direct.*

Q. Set it up with the others, please. Go ahead. A. On December 17th I recovered another .45 discharged shell and marked that "H". I recovered that in the north shelves; the shelves on the north side of the store—marked that "HX"—the third shelf from the top in the first section from the west end.

Q. That was recovered by you personally? A. That was recovered by me personally on December 17th.

Q. Do you find the mark "HX" on it now? A. Yes, sir.

461 Mr. Foley: If your Honor please, I will offer all five of these shells, which have been described by the witness, as one exhibit. I do not believe it would serve any purpose to have them as separate exhibits. I think we will save time by marking them as one exhibit.

Mr. Wilkinson: I will make the same objection to their reception in evidence against the defendant, Moore; on the same grounds and the further ground they were recovered at a distant time from the alleged commission of the crime and as wholly immaterial and incompetent as to this particular alleged
462 crime in this indictment. I object to them at this time and move that they be excluded.

Mr. Fleischman: The same objection on behalf of the defendant, Lester Haughton.

The Court: Objections overruled. Same received as one exhibit.

Mr. Wilkinson: Exception.

Mr. Fleischman: Exception.

The Court: I understand them to be four shells found on December 13th and one shell found on December 17, is that right?

The Witness: Yes, sir.

The Court: The one found on December 17th has what mark on it?

The Witness: HX. The others are H, H-1, H-2, H-3.

(Same received in evidence and marked People's Ex. 18 of this date.)

Q. I show you People's Ex. 8 in evidence and ask you whether you have seen it before? A. Yes, sir. 464

Q. Where did you see it? A. I saw this in No. 1439 Webster Avenue on the night of December 13, 1946.

Q. Was it given into your custody? A. Yes, sir.

Q. By whom? A. By detective Holt.

Q. Put it back there. (Indicating.) Examine People's Exhibit 9 and tell me whether you have seen that before. A. Yes, sir.

Q. When did you first see it? A. I saw this December 13th, 1946.

Q. In the same premises? A. In the same premises, given to me by the same detective.

Q. All right; return it. Look at People's Ex. 465 10 in evidence and tell me whether you have seen it before? A. Yes, sir, I saw this at the same place on the same date. It was given to me by the same detective.

Q. Thank you. Yesterday you testified that there was placed in your custody by detective Holt that night, People's Ex. 1, the .38. A. Yes, sir.

Q. Did you on that occasion examine this gun as to its condition? A. Yes, sir.

Q. What did you find? A. I found that it had been discharged six times and contained six discharged shells.

Q. You testified yesterday you received People's Ex. 11 in evidence from detective Holt on the night of the 13th of December; did you examine that gun, People's Ex. 11? A. Yes, sir.

Q. Was that examination made by you while you were still on the scene? A. Yes, sir.

Q. What was the condition of that gun? A.
467 That gun had not been fired and contained six cartridges.

Q. It was fully loaded? A. Yes.

Q. Did you examine it to see whether it had been recently discharged? A. Yes, sir.

Q. Had it been? A. No, sir.

Q. Did you find some lead pellets? A. Yes, sir.

Q. Will you please tell us what you found and where? A. Yes, sir. One .38 caliber deformed lead bullet, marked H, was recovered in the east end of the main store lying on the floor, at the north end of the radiator.

Q. Is the east end of the store, the front end? A. Yes

468 Q. Did you mark it? A. I marked it "H".

Q. Was it found by you? A. Yes.

Q. On December 13th? A. Yes, sir.

Q. Do you find that mark on it now? A. Yes, sir.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: The same objection on the same grounds for the defendant Moore.

Mr. Fleischman: The same objection on the same grounds for the defendant Lester Haughton.

The Court: Objections overruled. Received.

(Same received in evidence and marked People's Ex. 19 of this date.)

Q. Take the next object you have? A. A .38 caliber deformed lead bullet, marked H-1. That was recovered on the floor in front of the west counter in the main store.

Q. Of the two counters, the one you call the 470
west counter would be the one to the rear? A. Yes.

Q. On the floor in front of that counter was where you found this exhibit? A. Yes.

Q. Did you mark it? A. Yes.

Q. Do you find that mark on it now? A. Yes, sir.

Q. Did you find it the same night? A. Yes, sir.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: The same objection as heretofore.

Mr. Fleischman: The same objection as heretofore. 471

The Court: The same ruling. Received.

(Same received in evidence and marked People's Ex. 20 of this date.)

Q. Proceed. A. On the floor behind this rear counter, not in front of it, behind it, the west counter, I found one piece of lead, marked with H-2. That was found on December 13th, 1946.

Q. Do you find the mark on it that you made to identify it? A. Yes, sir.

Mr. Foley: I offer it in evidence.
Mr. Wilkinson: The same objection.
Mr. Fleischman: The same objection.
The Court: The same ruling. Received.
Mr. Wilkinson: Exception.
Mr. Fleischman: Exception.

(Same received in evidence and marked People's Ex. 21 in evidence as of this date.)

473 Q. Proceed. A. One .38 caliber deformed lead bullet, marked H-3, was recovered in the inner tube of the right front tire, taken from an automobile, a 1946 Oldsmobile, license LS 289, N. Y., which was parked in front of No. 1439 Webster Avenue.

Q. Did you mark that bullet? A. Yes, sir, H-3.

Q. Was that recovered by you? A. Yes, that was recovered by me. While the tire and tube were taken off by other people, I felt a bullet in the tube and withdrew it from the same hole in which it entered.

Q. Do you find your mark on it? A. Yes.

The Court: When was that found?
474 The Witness: December 13th.
Mr. Foley: I offer it in evidence.
Mr. Wilkinson: The same objection.
Mr. Fleischman: The same objection.
The Court: The same ruling. Received.

(Same received in evidence and marked People's Ex. 22 of this date.)

Q. Have you another one there? A. Yes, sir. One .38 caliber deformed lead bullet, marked 4-H, which was recovered in the gutter in front of No. 1430 Webster Avenue.

Q. Is that on the opposite side of the premises you were working in? A. Yes. That was recovered on December 13th, 1946.

Q. Have you marked it? A. Yes, sir.,

Q. Do you find your mark on it? A. Yes, sir.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: The same objection, based on the same grounds.

476

Mr. Fleischman: The same objection.

The Court: The same ruling. Received.

(Same received as People's Ex. 23 and so marked as of this date.)

Q. Have you one more? A. Yes, sir.

Q. Where did you find it? A. I have one .38 caliber copper coated lead bullet, marked HX that was recovered behind the panel on the first —that is, the bottom shelf at the east end of the main store; the east end being the front end, these shelves being on the north side of the store.

Q. These shelves? A. Yes, sir, shelves. This bullet was recovered December 17th, 1946.

477

Q. By you? A. Yes, sir.

Q. Did you mark it? A. Yes, sir.

Q. Do you find the mark on it now? A. Yes, sir.

Mr. Foley: I offer it in evidence.

Mr. Fleischman: I object to the introduction in evidence of that exhibit on the same grounds heretofore made.

Mr. Wilkinson: The same objection on behalf of the defendant Moore.

The Court: The same ruling. Received.

(Same received in evidence and marked People's Ex. 24 of this date.)

Q. You have testified here this morning you received People's Exhibits 8 and 9, the empty or discharged shells and a fragment of bullet, People's Ex. 10 from detective Holt on the night of the 13th of December, 1946. A. Yes, sir.

479 Mr. Foley: I think our first exhibit today was No. 13.

The Court: That is right.

Q. The other exhibits from and including People's Ex. in evidence 13, to People's Exhibit in evidence 24, are the items you have produced here today and which have been admitted in evidence? A. Yes, sir.

Q. What did you do with People's Exs. 8, 9, 10 and all the others from and including 13, to and including Exhibit 24? A. The ones that I received and recovered on the night of the 13th of December, I gave those to Sergeant Butts on the morning of December 14th, 1946. Those that I re-
480 covered on the 17th, I gave those to Sergeant Butts on the same date in the afternoon.

Q. So that all of those you either received or recovered on whatever date, you delivered to Sergeant Butts, your superior officer in the Ballistics Bureau? A. Yes, sir.

Mr. Foley: Thank you. That is all.

Cross-examination by Mr. Wilkinson.

Q. You had some records you were reading from. A. I had some notes I had taken at the scene.

Q. Are those the notes you took at the scene? A. Yes.

Q. Did you incorporate those notes in your police record? A. Yes.

Q. May we see those notes? A. Surely. (Witness hands notes to counsel.)

Mr. Wilkinson: May we have a ten minutes' recess? 482

The Court: It is only reasonable you should be allowed to look at those. Gentlemen, go upstairs until we send for you. Defendants remanded.

(After Short Recess.)

Mr. Wilkinson: Detective Huston, I will now return your notes to you (handing to witness).

The Witness: Thank you.

Q. Now, on December 13th you arrived there about ten minutes of seven, is that correct? A. Yes, sir. 483

Q. Did you have a talk with the clerk in the store there? A. No, sir; I don't think so.

Q. Did you see the clerk there? A. I don't think I saw him until much later on, and I don't think I saw him in the store at all.

Q. What is your province in going there? Do you confine it merely to ballistics? A. That's all.

Q. Do you take fingerprints at all? A. No, sir; we don't take fingerprints. We don't interrogate witnesses. My investigation is confined strictly to ballistics.

Q. Was there anyone there taking fingerprints? A. I don't know if there were or not.

Q. Did you look for any other guns there? A. Yes, sir.

Q. Did you find any other guns? A. No, sir.

Q. Did you question the storekeeper as to whether or not he had a gun? A. No, sir.

Q. Did you see the storekeeper there? A. I
485 don't think so; no, sir. At that time I didn't know who the storekeeper was.

Q. Well, now, you have stated that Detective Holt gave you a shell, is that right; one of the shells that was admitted in evidence here? A. He gave me two shells.

Q. He gave you two shells? A. Yes, sir.

Q. What were they, .45 shells? A. Yes, sir.

Q. Did he tell you that he picked them up in the place? A. Yes, sir.

Q. Did he tell you where he picked them up? A. I believe he did; yes, sir.

Q. Where did he pick them up?

The Witness: I will have to refer to these
486 again.

Mr. Wilkinson: All right, sir.

The Court: You may.

A. He told me he recovered the two shells in the west end of the main store. That would be the front end. No, no, wait a minute. The west end of the main store at the entrance to the back room. That would be the rear end of the main store.

Q. Did he tell you that he was one of the first detectives on the scene? A. No, sir.

Q. Did any of the other detectives recover any shells? A. If they did I didn't get them.

Q. Did he turn those shells over to you as soon as you came into the place? A. Yes, sir.

Q. Did he tell you that he had made an examination of the place to determine if there were any shells there? A. No, sir.

Q. Did he tell you he investigated the premises and found two shells? A. No, sir.

Q. What was his conversation with you with respect to the two shells he found? A. As near as I can remember, I asked, "Did anybody pick up any evidence, shells or bullets?" and Holt says, "I did." I said, "All right, may I have them," and we did get them, and at that time he marked them in my presence and told me where he found them, and I took them from him. 488

Q. Did he tell you that they were the only two shells that he found in the place? A. Yes, sir.

Q. And he was there before you were, is that correct? A. Yes, sir.

Q. The Medical Examiner and the doctor had been there before? A. I didn't see any ambulance doctor, but the Medical Examiner was there when I arrived. 489

Q. Then you say that you found these shells? A. Yes, sir.

Q. After you arrived there, is that correct? A. Yes, sir.

Q. Did Detective Holt tell you that the only shells found in the place were the two he had? A. No, sir.

Q. Now, you say you found a .38 lead pellet in a tire tube? A. Yes, sir.

Q. Where was that automobile parked, in front of the place? A. Yes, sir.

Q. Was the car moved at any time? A. I don't know if it was or not.

Q. Were there any holes in the window or doors of the store? A. Yes, sir.

Q. Where were those located? A. One hole was—this is in the front door—9½ inches up from the bottom of the door and 7 inches from the north edge, and another one, that's number 2, 491 was in the plate glass of the door at the south edge of this glass and 4 inches up from the bottom, and there was a third hole in the top of the door, 2½ inches down from the top and 10 inches from the south edge.

Q. So how many in all would you say were in that door? A. Three.

Q. Did you examine those holes to determine what caused them? A. Yes, sir.

Q. What examination did you make of them? A. Visually.

Q. Did anyone else examine them in your presence? A. Not in my presence; no, sir.

Q. This visual examination, was it a casual examination or a detailed examination? A. No, 492 sir; it was quite detailed.

Q. Did you take any photographs of it? A. No, sir.

Q. Now, those holes, were they completely through the panel? A. Yes, sir.

Q. The glass panel? A. Yes, sir.

Q. Were there any through the wooden panel? A. Yes, sir.

Q. How long would you say you examined those bullet holes? A. Oh, I don't know in minutes.

Q. Well, you were interested in them, were you not? A. Yes, sir.

Q. Were you interested to the extent of determining whether they were bullet holes or not? A. Yes, sir.

Q. And were you further interested in determining the direction of the bullets? A. Yes, sir.

Q. Have you any statement on your report with respect to the bullet holes that were in the door? A. Yes, sir.

Q. Will you locate that on your report? A. Yes, sir; I have it. 494

Q. May I see it, please? A. Sure (handing paper to counsel).

Q. From your examination of the bullet holes in that door, were you able to determine the type or caliber of bullet that passed through that door? A. No, sir.

Q. But you are, however, able to state that they were bullet holes? A. Yes, sir.

Q. Could you tell whether they were recent? A. Yes, sir.

Q. Within a matter of days? A. No, sir; not that close.

Q. Well, could you give us some idea as to when those bullet holes were made then with respect to your examination on December 13th? 495
A. Oh, I think they were made recently; yes, sir.

Q. How recent of December 13th? A. Within two days; three days.

Mr. Wilkinson: That's all.

496 *S. W. Huston—For People—Cross—Redirect.*

By Mr. Fleischman.

Q. Now, Detective, these exhibits that you found in the store, most of them were visible to the naked eye, weren't they? A. No, sir; some of them were and some of them weren't.

Q. But some of them were? A. Some of them were; yes, sir.

Q. In other words, you didn't have to look too far or too long to locate them, those that were visible to the naked eye? A. No, sir.

497 Mr. Fleischman: That's all, Your Honor.

Redirect examination by Mr. Foley.

Q. Officer Huston, in the examination you made of the bullet holes in the door of the premises on Webster Avenue, could you determine whether or not the bullets had passed from the inside to the outside through the door? A. Yes, sir.

Q. Which way did they go? A. They came from inside out.

Q. Did you make any examination to determine, whether or not any of the bullet holes you saw were in line with, first of all, the tire of an automobile outside? A. Yes, sir.

498 Q. And was it? A. Yes, sir.

Q. Did you examine that tire? A. Yes, sir.

Q. Did you there find one of the exhibits which you have produced here today? A. Yes, sir.

Q. And did another hole, when you lined it up, point to a telegraph pole——

Mr. Fleischman: If your Honor pleases, I object to Mr. Foley leading the witness.

The Court: Overruled.

Mr. Fleischman: Exception.

Q. (Continuing) —to a telegraph pole or a power line pole, a metal pole across the street? A. Yes, sir.

Q. And was it at the base of that pole that you found the other exhibit you produced here? A. Yes, sir.

Mr. Foley: That's all.

Recross-examination by Mr. Fleischman.

Q. When you say you lined up these holes, what exactly did you do? A. Well, you can see the bullet hole, and if you insert a pencil, a straight 500
ramrod or any other straight object through that hole, then it would point to the direction that the bullet traveled after it went out of there. Then you take a sight from your straight ramrod or whatever you may use, and that will converge on a point at some further distance away.

Q. Now, you say you put the ramrod through the wood and then you take a sight, is that right? A. Yes, sir.

Q. Now, isn't it a fact that the wood blocks your line of vision so that you cannot take a sight? A. You can take a sight from over the door or even get a line on where it points. Then withdraw the ramrod, line up the sight with your 501
eye, and back off until you barely have light showing through your hole. Then, if you put a monocular or some other magnifying glass through it, it will enlarge your object at the other end, I mean, after looking through that hole.

Q. When you put that magnifying glass through, wouldn't it also affect the accuracy of that alignment of the sight? A. No, sir.

Q. Isn't it a fact that it would enlarge the hole so the sight would be effected that way? A. No, sir. You focus your monocular. Instead of focusing it on the hole, you focus it on that part that can be seen through the hole.

Q. Instead of focusing it on the hole you focus it on that part that can be seen through the hole. What do you mean by that? I don't quite understand you. A. If the hole were at that wall there, then instead of focusing your monocular on this hole, if you focus it on that wall and then look through the hole, then the object at
503 that wall will be the one that will be enlarged and not the hole.

Q. Well, you couldn't very well sight through the hole then and train your monocular on the object if you are trying to look up at the same time, could you? A. Yes, sir.

Q. How? A. With the adjusting eye-piece.

Mr. Fleischman: That's all.

Re-redirect examination by Mr. Foley.

Q. Whether the system works or not, you tried it that night, didn't you?

504 Mr. Wilkinson: I will object to the form of the question.

The Court: Sustained.

Q. You found one bullet hole in the door?

Mr. Wilkinson: I will object to the leading.

Q. (Continuing) —and another at the foot of the pole?

The Court: Sustained. Already answered.

Mr. Foley: That's all.

(Witness excused.)

Mr. Foley: Before the officer leaves, Your Honor, I would like to have it noted on the record that all of his memoranda concerning his activities and investigation on the night of the 13th and subsequently on the day of the 17th have been placed at the disposal of 506 defense counsel.

Mr. Wilkinson: I will object to that statement.

The Court: The record already discloses what they had in the case.

Mr. Wilkinson: It doesn't indicate at all. The officer hasn't testified that this is all of the records.

The Court: I said the record indicates what you had, doesn't it, because you asked him——

Mr. Wilkinson: For his notes; that's right.

The Court: O. K. Proceed.

507

RICHARD SHAW, 146 West 170th Street, Bronx, New York, called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Foley.

Q. Mr. Shaw, what is your business? A. Retail liquor business.

Q. Where is the place of business? A. 1439 Webster Avenue, the Bronx.

Q. Who owns that store? A. My wife.

Q. And do you work in it? A. I do.

Q. Anybody else? A. My sister works as a clerk.

Q. Do you recall the 13th day of December, 1946? A. I do.

Q. On the evening of that day, were you working in the store? A. I was.

Q. Was anybody else there working with you? A. No, sir.

509 Q. Did you know Detective Burke? A. Yes, sir.

Q. Did he come to your store on the evening of that day? A. He did.

Q. Do you know about what time? A. About 5.15, I judge.

Q. Was that the first time he had ever come to your store? A. No, sir.

Q. On about how many occasions previous to that day had he come to your store?

Mr. Fleischmann: If Your Honor pleases, I object to that; it is not material.

The Court: Sustained.

510 Q. Did you know Detective Burke socially? A. No, sir.

Q. Or as a police officer? A. As a police officer.

Q. And it was as a police officer he came to your place of business? A. Yes, sir.

Q. Now, after he had been there for some time, something happened, something took place there. Will you tell us as nearly as you can about what time it happened? A. I will say between five-thirty and a quarter to six.

Q. What was it that happened at that time? A. Well, two colored men entered the store. I was in the back talking to Detective Burke.

Q. Where was Burke at that time? A. He was sitting behind cases towards the back of the store, a place used as a storeroom. I was on his right where I could be seen from the street.

Mr. Wilkinson: I move to strike that out

The Court: Denied.

Mr. Wilkinson: I respectfully except.

Mr. Foley: Go ahead.

A. (Resuming) —and Detective Burke couldn't 512
be seen. These two men——

Mr. Wilkinson: I move to strike that out as not responsive; not binding on the defendant.

The Court: Denied.

Mr. Wilkinson: I respectfully except.

A. (Resuming) These two men walked into the store, and I left to go to the front to greet them as I would any other customer, and one of the men said to me when I came up to him, he said, "Get in back," and I didn't move; it just didn't register. With that he showed a gun, an 513
automatic, and I raised my hands, and he said, "Get your hands down and get in the back." Well, I turned around and started to walk to the back. Then, before I got——

Mr. Foley. Let me interrupt you.

Q. At about what point or part of the store was it that you came up to the man with the gun with

514 *Richard Shaw—For People—Direct.*

respect to front and rear of the store? A. Well, it was nearly the end of the first counter, which I judge would be about ten feet from the door.

Q. You have two counters in the place? A. Yes, sir.

Q. And they run in a straight line? A. Well, there's a separation; there's an aisle in between.

Q. About the middle of them? A. Yes, sir.

Q. It was near that junction or that aisle through that counter that you encountered this man? A. Yes, sir.

Q. You say then he said, "Put your hands down and go to the rear"? A. That's right.

515 Q. You preceded him?

Mr. Wilkinson: I will object to the leading. I think the witness should be permitted to testify.

The Court: Yes. Let the witness testify.

A. When he told me to get in the back I put my hands down, and I turned and walked towards the back. I didn't see; I don't know whether he was in back of me or on the right side of me. As I got close to the boxes, Detective Burke stepped out from the boxes, and the next I saw of this man was he was on my right towards the

516 shelves. He made a lunge for Detective Burke, and the last I saw was Detective Burke had grabbed him. They were in one another's arms. With that I ran down towards that aisle in the center, got behind the counter and ducked.

Q. Did you see anything more of what happened at that time? A. No, sir.

Q. Did you hear any shots? A. Yes, I did.

Q. Can you say about how many? A. Well, at the time I thought I heard about six or seven shots.

Q. Did you see anybody leave the store? A. No, sir.

Q. Do you know how long you remained on the floor behind the counter? A. It is hard to judge. It seemed like a long time.

Q. When you came out from behind the counter, what did you see? A. Well, I saw Detective Burke sprawled. Well, his arms were supporting his body, and I could see a wound in the top of his head. 518

Q. Where was he in the store? A. In the back near the cases, near where he had been hidden.

Q. Were the colored men in the store at that time? A. No, sir.

Q. What did you do? A. Well, I called headquarters and told them what had happened.

Q. You made a report to police headquarters? A. Yes, sir, and I waited a while. Then I tried to call Tremont Avenue. I don't know what headquarters he had given me, and I knew Detective Burke had been from Tremont. I got a wrong number, then I called again, and I finally got the station and I told them what happened.

Q. Did the police arrive presently? A. Yes, sir. 519

Q. And the Medical Examiner? A. Well, I saw the Medical Examiner in there, yes, sir; how soon he came I don't know.

Q. Or did you see an ambulance doctor? A. Yes; there was an interne there.

Q. How long did you stay in the premises? A. It must have been a couple of hours after that.

Q. Where did you go then? A. I went down to Rogues Gallery.

Q. Did you look at pictures? A. Yes, sir.

Q. Now, do you recall the afternoon and evening of February 7, 1947? A. Yes, I do.

Q. Where were you at that time? A. At the District Attorney's office.

Q. Do you know what time you got there? A. Shortly after three, I believe.

Q. In the afternoon? A. Yes, sir.

Q. Of February 7th? A. That's right, sir.

Q. And when did you leave? A. About 5:00 A. M. the next morning.

521 Q. While you were there, did you see either or both of these defendants? A. I saw them both.

Q. Which one did you see first? A. Moore, the fellow on my left.

Mr. Foley: Indicating the defendant Moore.

Q. Were you present in a room in the District Attorney's office when questions were asked of Moore and answers made by him? A. Yes, sir.

Q. Do you know who asked the questions? A. Mr. Ryan.

Q. And Moore made the answers? A. Yes, sir.

522 Q. Were you there throughout the questioning of Moore? A. Yes, sir.

Q. Was Moore questioned to your knowledge on more than one occasion that evening? A. Well, he made two confessions.

Mr. Wilkinson: I will object to that move to strike it out; no responsive; not binding upon the defendant.

The Court: It is not responsive. Strike it out. The jury is instructed to disregard it. Repeat the question.

(Question repeated as follows: "Q. Was Moore questioned to your knowledge on more than one occasion that evening?").

The Court: Just answer yes or no.

The Witness: No; just throughout—I still don't understand the question. Do you mean continually or at another time?

Mr. Foley: Suppose I withdraw the question, Your Honor.

524

Q. You have stated that you were present when Moore was asked questions by Mr. Ryan? A. Yes, sir.

Q. And he made answers? A. Yes, sir.

Q. Was there a stenographer present? A. Yes, sir.

Q. At a later time on that same night, or perhaps early the next morning, were you present in that room when questions were asked of Moore? A. Yes, sir.

Q. By whom were they asked? A. Mr. Ryan.

Q. And was there a stenographer present? A. Yes, sir.

Q. Did you hear all the questions and all the answers? A. Yes, sir. 525

Q. In the time between the first questioning and the second questioning, did you remain for some time in Mr. Ryan's room? A. Yes, sir.

Q. Were you seated near the defendant Moore? A. Right next to him.

Q. Did you have a conversation with him? A. Yes, sir.

Q. Will you tell us, please, what you said to him or he said to you? A. Well, he said to me——

Mr. Fleischman: Just a minute. If Your Honor pleases, I object to the answer on the ground that the testimony, whatever conversation this witness had with the defendant Moore, is not binding on the defendant Lester Haughton.

The Court: This evidence is received as to the defendant Moore. It is not received in evidence as to the defendant Haughton. I will repeat again, so there will be no misunderstanding as to the ruling of the Court.

527 When men are charged with the commission of a crime or acting in a conspiracy to commit a crime, when two or more men are so involved, everything they say or do during the commission of the crime is received in evidence and may be considered by the jury against all those persons so engaged. However, when the crime is completed, when the crime is ended or terminated, each man is then on his own, and whatever he says is received in evidence only as to the particular defendant who makes the statement or does acts after the commission of the crime.

528 I do that now so that you will understand the rulings of the Court from time to time. This evidence is received now only as to the defendant Moore.

Q. Now, Mr. Shaw, do you recall the question that I asked you? A. Yes, sir.

Q. And will you please answer it? A. Well, Moore said to me that he recognized me as soon

as he saw me in the corridor. He said, "I put the brim of my hat up and opened my eyes wide so that you wouldn't recognize me." Also in the course of conversation he said—he might have said this before; I am not so sure. He says, "I know you"——

Mr. Wilkinson: I will object to what he might have said and move to strike it out, unless the witness remembers what he is testifying to.

Mr. Foley: The witness hasn't said, Your Honor, "he might have said." He said, "He might have said it before or after. 530

Mr. Wilkinson: The witness's testimony is on the record.

Mr. Foley: Let's have it read, Your Honor, if it is on the record, and not misquote it.

Mr. Wilkinson: I am not misquoting, but I want the witness to testify to what happened.

The Court: Wait a minute, please. There is no necessity for this. You have made an objection. It is overruled. Proceed.

Mr. Wilkinson: I respectfully except.

A. (resuming) He said to me that "I know you; you are the fellow that was in the back when we came in," and he also said to me that I was very lucky I moved as fast as I did, because otherwise he would have used me as a shield and I would probably have been killed also. 531

Q. Were you present when the stenographer returned to the room with the typewritten copy of the questions and answers? A. Yes, sir.

Q. Were they submitted to Moore? A. Yes, sir.

Q. On each occasion? A. Yes, sir.

Q. Did Moore in your presence make corrections in them? A. He did.

Q. Did he initial the corrections? A. Yes, sir.

Q. Were they made with pen and ink? A. Yes, sir.

Q. Were you there at any time during the morning of February 8th when the defendant Haughton was present? A. Yes, sir.

Q. Was that also in Mr. Ryan's room? A.
533 Yes, sir.

Q. Was he in your presence asked questions by Mr. Ryan? A. Yes, sir.

Q. Did he make answers to those questions? A. Yes, sir.

Q. Some time after did the stenographer return in your presence with a transcript of those questions and answers? A. Yes, sir.

Q. Was it submitted to the defendant Haughton? A. Yes, sir.

Q. Did he in your presence make some corrections in pen and ink in that transcript? A. He did.

Q. And did he sign the statement in your presence? A. Yes, sir.

534 Q. Page by page? A. Yes, sir.

Q. And did he initial the changes that he made in it? A. He did, sir.

Q. Now, when Burke came into your store, do you know whether or not he had a gun? A. He had two guns.

Q. Do you know what he did with them? A. Well, one he had on his hip. That was his serv-

ice revolver, and the other he had laid on some boxes in the back.

Q. Now, Mr. Shaw, I show you People's Exhibit No. 5 in evidence, and ask you whether you recognize what is shown on it (handing photograph to witness)? A. Yes, sir.

Q. What is it? A. It is the back room of the store.

Q. The store in which you worked on December 13, 1946? A. Yes, sir.

Q. Can you see in that picture Detective Burke's second gun on the boxes? A. Yes, sir.

536 Mr. Foley: With your Honor's permission I would like to show this to the jury at this time.

The Court: Yes. That exhibit may be shown at this time.

Mr. Fleischman: If your Honor pleases, may I see that exhibit for a minute, please?

(Same handed to Mr. Fleischman.)

Mr. Foley: May I have your Honor's permission to ask the witness to indicate to the jury where the gun is before I pass it to them?

The Court: He may indicate. Step down.

(Witness leaves stand and places himself in front of jury box.) 537

The Court: Describe it, please, as he indicates it, for the record.

Mr. Foley: The witness indicates the gun on top of the left end of three vertical rows of boxes substantially in the center of the picture.

The Court: All right; come back, please.

(Witness returns to stand.)

Q. Now, Mr. Shaw, there was but one door from this store leading to the street? A. Yes, sir.

Q. Did that door close automatically? A. Yes, sir.

Q. Were there any bullet holes in the wood or glass of that door prior to this hold-up? A. No, sir.

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Mr. Wilkinson: If the Court pleases, the cross-examination of this witness is going to
539 be rather lengthy, and we were going to ask permission of the Court to defer it until after the luncheon recess.

The Court: You have fifteen minutes to go.

Mr. Wilkinson: Well, I make that application in behalf of the defendant Moore and urge the application upon the Court.

The Court: You have fifteen minutes to go. The Court won't recess until one o'clock.

Mr. McDonough: I make the same motion on behalf of Lester Haughton, and I would like to urge the point, because of the fact that in the midst of cross-examination we will
540 have a recess for lunch, and I don't know whether we can proceed.

The Court: Go as far as you can.

Cross-examination by Mr. Wilkinson.

Q. Mr. Shaw, you stated that your wife owns that place? A. That's right.

Q. What is that, a licensed liquor store? A. Yes, sir.

Q. In whose name is the license? A. Ray Miller Shaw, my wife.

Q. That's your wife? A. Yes, sir.

Q. And do you work there? A. Yes, sir.

Q. Do you have any other occupation? A. No, sir.

Q. The license was never in your name? A. No, sir.

Q. How long have you had that license? A. Since December of '45.

Q. Do you have a gun permit? A. No, sir.

Q. Did you ever have one? A. No, sir.

Q. Did you ever make application for one? A. 542
No, sir.

Q. Is your father on the premises some time? A. My father has been dead five years.

Mr Wilkinson: I am sorry, sir.

Q. Are there any other male clerks there at all? A. There is now. There wasn't at the time.

Q. You were the only male clerk there? A. Well, I had my brother-in-law. He would come and help me in the evening, or some evenings.

Q. Did you ever, or your brother-in-law ever apply for a gun permit? A. No, sir.

Q. Did you ever have a gun on the premises? A. No, sir. 543

Q. Did you ever talk with a fellow by the name of Napoleon Mitchell, a colored fellow from the County Jail? A. I don't remember the name.

Q. Have you been in the District Attorney's office on any occasions since this occurred? A. Yes, sir.

Q. How many times would you say? A. Maybe a half dozen; maybe more; every time they brought somebody up, I guess.

Q. Well, how many times would you say? A. Well, I would say at least a half dozen.

Q. Six times since December, is that right? A. That's right.

Q. Could it be twelve times? A. I don't think so.

Q. Ten times? A. I didn't count. I couldn't say. It seems around six times.

Q. Were you ever brought down to identify two boys by the names of Mills and James Moore? A. I don't remember the name Mills. I remember the name Moore. If it is James Moore I don't know.

545 Q. But you remember a Moore other than this Moore? A. Yes, sir.

Q. Eddie Moore? A. I wouldn't know his first name.

Q. And where did you see those boys? A. At 161st Street precinct. I believe it is the 42nd.

Q. Did you see them at any time in the District Attorney's office? A. Yes, I did.

Q. And at any time did you see this fellow Mitchell there, another colored boy? A. The name Mitchell I don't recall.

Q. You looked at quite a few of them, didn't you? A. Yes.

Q. And you were down here whenever anybody
546 was brought in, is that right? A. I can't say that I was down here all the time they brought somebody in. I was in about a half dozen times.

Q. Did you see Eddie Moore and this other fellow that was with him? A. When I saw Moore I believe there were five men all together.

Q. Oh, there were five? A. Yes, sir.

Q. And where did you see the five of them? A. Well, I saw them at 161st Street first. I also saw them at the District Attorney's office.

Q. How many times did you see them at the District Attorney's office? A. Once, I believe.

Q. Could it be twice? A. I don't think so.

Q. Well, then, it was only once, is that right? A. That's right.

Q. And did you know that both of those boys had been picked up and charged with this crime?

Mr. Foley: I object, if your Honor pleases.

The Court: Objection sustained.

Q. Had you been told by the District Attorney that both of those boys were charged with the crime in your liquor store? A. No, sir. 548

Q. Had you been told by any of the detectives assigned to the District Attorney's office that they had picked up the two men that committed that alleged crime in your store? A. No.

Q. Were you brought in to identify those two boys? A. There were five. I was never brought in to identify two, but the name Moore I associate with either four or five men.

Q. Were you brought in to identify the five of them? A. Yes.

Q. How many times were you brought in to identify them? A. I believe once in the District Attorney's office.

Q. And did you also look them over at the station house? A. Yes, sir. 549

Q. And after looking them over at the station house, you again looked them over at the District Attorney's office, is that correct? A. That's right.

Q. Now, when did you look them over at the station house? A. You mean the date?

Q. Approximately? A. Well, I couldn't even judge. I couldn't even judge the date; probably

towards the end of December; perhaps early January.

Q. How long after did you again see them at the District Attorney's office? A. I don't know; maybe ten days. I mean, I didn't try to keep track of any dates.

Q. I realize that, but we want an approximate time. About ten days. Ten days, two weeks, perhaps a little less. I can't recall.

Q. And how many other men did you look over? A. It must have been hundreds.

Q. Did you identify Mills and Eddie Moore of the group of five? A. I did not.

551 Q. Did you tell the detectives that they look like the men? A. I did not.

Q. And were you thereafter brought to the District Attorney's office again to look them over? A. I was.

Q. And did you identify them in the District Attorney's office? A. No.

Q. Did the District Attorney tell you that he had a stool pigeon in the Bronx County Jail, and the stool pigeon had told him that Mills and Moore were the two men? A. No, he did not.

Q. Did the detectives tell you that the District Attorney had a stool pigeon in the Bronx County Jail? A. They did not.

552 Q. And they turned in Mills and Moore? A. No, they did not.

Q. Did you hear anything about the stool pigeon in the Bronx County Jail? A. No.

Q. Did you talk to anybody about this case yesterday? A. Well, just in the witness room.

Q. Witness room? Where is the witness room? A. Down the hall here where I sat with some of

the detectives, some of the witnesses that were being called.

Q. On this floor there is a witness room? A. Well, it is marked "Police" on the door.

Q. Oh, that's where you were? A. Yes, sir.

Q. Whom were you talking to there about this case? A. Some of the detectives there.

Q. Well, name some of them. You know them all pretty well, don't you? A. I know some of them.

Q. Well, name them? A. Well, there was Detective Green. There was a man in there they call Mack; I don't know his second name. There was 554
a Mr. Griffith in there; I believe that's his name; he is an elderly sort of man, and Sergeant Hess was in there.

Q. Sergeant Hess? A. That's right.

Q. Do you know him, too? A. By name. I know none of these men personally.

Q. Were you discussing this case with them yesterday? A. I told them I couldn't understand—

Mr. Wilkinson: I will object to that and move to strike out the answer. The question was "Were you discussing it with them".

The Court: Answer the question, just yes or no. 555

A. Yes.

Q. With all of those detetcives and the sergeant, is that correct? A. Well, they weren't grouped.

Q. Were you discussing the case with anybody on the day before? A. The day before was Sunday. No.

Q. On Saturday? A. I might have discussed it in the house. I don't know.

Q. Did you discuss it with the District Attorney? A. Not on Saturday.

Q. When did you last discuss it with him? A. On Thursday.

Q. Did you discuss it with him yesterday? A. No.

Q. Today at any time? A. Well, today I spoke to Mr. Delagi.

Q. What time was that? A. Oh, about nine-thirty.

557 Q. Did they tell you what had been testified to here? A. No, sir.

Q. Do you know what I am going to ask you? A. I thought you finished your sentence.

Q. Do you know what I am going to ask you, the question? A. How could I?

The Court: Never mind. No arguments.

Q. Now, when you discussed this with Mr. Delagi, did you go over with him what you would testify to here today? A. No, sir.

Q. Whom did you go over that with? A. Nobody.

Q. So that when you came to court today to 558 testify you hadn't told anybody previously what you were going to testify to, is that correct? A. Certainly not.

Mr. Foley: I object to that. That is drawing an incorrect inference upon the testimony that has been given here.

The Court: Objection sustained.

Mr. Wilkinson: Now, I think the witness ought to be able to answer the question.

Mr. Foley: I object to the characterization about his ability to answer it. I have an objection to that question.

The Court: You had a ruling. I sustained the objection.

Mr. Foley: I didn't hear it, sir.

The Court: Proceed.

Q. Now, you came to court here this morning to testify, did you not? A. That's right.

Q. Well, did you discuss with anybody prior to this morning what you were going to testify to here? A. No; I never knew what was going to be asked. 560

Q. That is your best answer, is that correct? A. That's right.

Q. How old are you, sir? A. 37.

Q. How long has your liquor store been at that address? A. I beg your pardon?

Q. How long has your liquor store been at that address? A. Since December, 1945.

Q. Now, you stated that on February 7, 1946, you saw George Moore in the District Attorney's office? A. 1947.

Mr. Wilkinson: 1947, rather. I stand corrected. 561

Q. You saw George Moore in the District Attorney's office? A. That's right.

Q. Was he alone in the District Attorney's office with you? A. No.

Q. Who else was present? A. Mr. Ryan was there. There was a stenographer. There was

Lieutenant Dinan. Mr. Foley was there at one time. Mr. Wallender was there at one time, and there were men coming in and out.

Q. What was this, a big room? A. I don't know the dimensions. It wasn't a cubby-hole.

Q. Do you know the difference between big and small as respects the room? A. Well, this is a big room, and that room was nowhere as big as this.

Q. Smaller than this court-room? A. That's right.

Q. Was George Moore seated or standing when you saw him? A. Seated.

563 Q. Who was seated next to him? A. I was, part of the time.

Q. Was he seated before you came in, or were you seated before he came in? A. He was seated before I came in.

Q. Was everybody else in the room seated? A. To the best of my knowledge, yes.

Q. Now, when you were brought into this room, did you walk right over and sit down next to him? A. No; I sat on the table first.

Q. Did you talk with anyone when you came in the room? A. No, not while I was sitting in there.

Q. You say while. How long were you seated at the table? A. Maybe a half hour; maybe three-

564 quarters of an hour.

Q. Sitting at the table? A. Yes, sir.

Q. As soon as you came in, is that right? A. Yes.

Q. Was somebody else doing all the talking? A. Well, Mr. Ryan was talking.

Q. Is he in the District Attorney's office, Mr. Ryan? A. Yes, sir.

Q. And he was doing the talking? A. Yes, sir.

Q. And you sat there and listened for a half hour on the table? A. Yes, sir.

Q. Well, now, was George Moore the only colored man in this room at the time? A. I don't hear you, sir.

Q. Was George Moore the only colored man in this room at the time? A. In the District Attorney's office?

Q. This room that you are talking about. A. Yes, he was.

Q. You know where that room was, do you not? A. Yes.

Q. Where was the room? A. The room was on 566
the sixth floor, or 6-M. 6-M, I believe.

Q. In the District Attorney's office? A. It is marked "Assistant" or "Chief Assistant District Attorney".

Q. And George Moore was the only colored man in the room? A. When I was in there; yes.

Q. Did you see him that day in the hallway before you went into the room? A. I saw him that evening, early evening, or around eight o'clock, perhaps.

Q. Well, now, when you referred to the room in the District Attorney's office where you sat on the table for a half hour while Mr. Ryan was doing the talking, what time of day was that? A. I imagine it was somewhere around eight o'clock. 567

Q. In the morning? A. In the evening.

Q. Eight o'clock in the evening? A. Yes.

Q. That's on February 7th? A. That's right.

Q. Now, is that the first time that you saw George Moore, on February 7th? A. I saw him when he walked into the corridor.

The Court: Do you want to suspend, or do you want to go on at this time?

Mr. Wilkinson: No; we will suspend.

The Court: You are admonished by the Court not to discuss the case. Form no opinion until the matter is submitted to you by me.

(Witness excused.)

The Court: Wait for the attendants and go to lunch. Come back at 2:15, please.

Defendants remanded.

(Recess declared until 2:15 P. M.)

569

(After Luncheon Recess)

Richard Shaw resumes the stand and further testifies as follows:

Cross-examination by Mr. Wilkinson (continued).

Q. Mr. Shaw, did you talk to anybody about this case during the luncheon recess? A. No, sir.

Q. You didn't discuss it with anyone? A. No, sir.

Q. Now, you stated that on February 7th about 8:00 P. M. you saw George Moore in the District
570 Attorney's office, is that correct? A. Yes, sir.

Q. And you first observed him in the corridor? A. That's right.

Q. Is that the time that you arrived at the District Attorney's office? A. No; I had been there earlier; about three in the afternoon.

Q. Three in the afternoon? A. Yes, sir.

Q. Now, when you observed him in the corridor, did you speak with him? A. No, I didn't.

Q. Was he alone? A. No; he had a couple of detectives with him.

Q. Did he stand in front of you at all? A. No, he didn't.

Q. Were you asked to identify him then? A. No.

Q. What time would you say that was? A. Shortly before 8:30 was when I first saw him.

Q. And you were there from about three? A. Yes, sir.

Q. Was he there at three, too? A. No, he wasn't.

Q. And when you saw him shortly before eight, 572
he was taken into this room, is that correct? A. He wasn't taken directly into the room. He was in another room with a couple of detectives, and a short while later——

The Court: Just a minute. These gentlemen must hear you. Keep your voice up, please.

Stenographer, read the answer.

(The pending answer is read as follows: "A. He wasn't taken directly into the room. He was in another room with a couple of detectives, and a short while later——"

A. (resuming)—he went into Mr. Ryan's office. 573

Q. He was in this other room with a couple of detectives? A. Yes, sir.

Q. Do you know who those detectives were? A. No, I don't.

Q. How long would you say he was in that room with them? A. Well, maybe ten minutes.

Q. Is that a room on the same floor? A. Yes, sir.

Q. Were you in that room at any time? A. No, I wasn't.

Q. Do you know how large that room is? A. Well, I couldn't say. I wasn't in the room.

Q. Do you know of your own knowledge whether anyone else was in that room when he was taken in there? A. No, I don't.

Q. You estimate that he was in there for about ten minutes? A. Yes, sir.

Q. And then brought into Mr. Ryan's office? A. Yes, sir.

Q. How long after he entered Mr. Ryan's office
575 did you enter the room? A. Oh, judge about an hour.

Q. An hour after he was in Mr. Ryan's office? A. Yes, sir.

Q. Where were you waiting for that hour? A. In the corridor.

Q. Did Mr. Ryan come out and speak to you at any time? A. No, he didn't.

Q. Did anyone come out and speak to you? A. Nobody came out of the office to speak; no.

Q. Did you recognize Moore when you saw him in the corridor? A. Not definitely. There were certain things about him that I recognized, but I wasn't sure.

Q. When you saw Moore in the corridor, did
576 you or did you not recognize him? A. I did not.

Q. Now, about an hour after you were taken into the room where he was, is that correct? A. That's right.

Q. And you were permitted to sit on a table in the room for half a hour, is that correct? A. That's right.

Q. And during this period of time Mr. Ryan was doing the talking, is that correct? A. That's right.

Q. And you were present and you saw what was going on? A. That's right.

Q. Then were you asked to identify him; yes or no? A. No.

Q. How long after that were you asked to identify him? A. After his confession I was asked if I recognized him, and I said yes.

Mr. Wilkinson: I move to strike that out as not responsive.

Mr. Foley: I object, if Your Honor please; that is a responsive answer.

The Court: Let me hear it.

(The answer is read as follows: "A. After his confession I was asked if I recognized him, and I said yes.") 578

The Court: He has endeavored to answer your question. Overruled. Proceed.

Mr. Wilkinson: I respectfully except.

The Court: Repeat the question.

(The Court Reporter repeats the pending question as follows: "Q. How long after that were you asked to identify him?")

The Court: Answer.

The Witness: Well, after the confession I sat down next to him and I was talking with him, and then that was the time when he told me, "Oh, I know you," and I recognized him 579 definitely.

Q. You made the identification of George Moore after the District Attorney advised you that he had confessed to the crime? A. I wasn't advised.

Mr. Foley: I object, if Your Honor please.

The Court: Overruled. He may answer.

Mr. Foley: I object to the form of the question. There has been no testimony that the District Attorney advised this witness there was a confession.

The Court: He may answer the question, however.

Mr. Foley: It is not in the evidence.

The Court: Proceed.

The Witness: I wasn't advised about anything.

Q. You made the identification of George Moore after the Assistant District Attorney or
581 the District Attorney brought you into this room, and while in that room you heard what amounted to a confession, is that correct? A. That's right.

Q. And that was after George Moore had been in that room with the police officers and the District Attorney for approximately an hour or so? A. That's right.

Q. And based on what you heard in that room you stated to the District Attorney that you were able to identify him? A. It wasn't based on what was stated in the room.

Q. Well, after what you heard in the room you were able to identify him? A. No; that isn't so, either.

582 Q. You had a conversation, you claim, with Moore in that room? A. I did.

Q. And based on that conversation you were able to identify him? A. It wasn't based on the conversation.

Q. You were permitted to have a conversation with him in that room? A. Yes, sir.

Q. And who was present when you had that conversation with him? A. Mr. Ryan was there.

Dr. Hochman was there. Lieutenant Dinan might have been there; I can't recall. I do recall Mr. Ryan and Dr. Hochman.

Q. Anyone else in the room? A. There were. I can't recall whom.

Q. Were there many? A. Oh, perhaps four or five.

Q. Police officers? A. Yes.

Q. How long did you remain in that room that particular night? A. I would say until close to midnight.

Q. And did they have George Moore in that room all that time? A. They did, except when 584
he wanted to go to relieve himself.

Q. And you were present with him? A. Yes, sir.

Q. Now, this conversation that you are alleged to have had with George Moore, on February 7th was that? A. That's right.

Q. Did you make any notations of that conversation at all? A. No, I didn't.

Q. You remembered it? A. That's right.

Q. Did you have any further conversation with him? A. I don't understand what you mean by further conversation.

Q. Other than what you have already told us? A. Nothing that I can remember.

Q. And that conversation you had while seated 585
next to him, is that right? A. That's right.

Q. How long did it take for that conversation? A. Well, about twenty minutes.

Q. Twenty minutes? A. Approximately.

Q. For George Moore to say to you what he is alleged to have said, is that correct? A. That's right.

Q. Now, who suggested the conversation between you and George Moore? A. Nobody. He suggested it, I guess. He started talking.

Q. You say, "I guess." A. I say he started talking; nobody suggested.

Q. Who told you to sit next to him? A. Nobody.

Q. Was that the only available chair in the room? A. No.

Q. Well, who suggested that you go over there and sit next to Moore? A. Nobody suggested that I sit next to him.

587 Q. You had been sitting on a table, hadn't you? A. That's right.

Q. You were sitting on a table for a half hour? A. That's right, and I believe Lieutenant Dinan was seated on the chair next to Moore. While the stenographer went out of the room, Lieutenant Dinan left the chair. I took the chair, and Mr. Ryan said I could. He didn't tell me.

Q. Mr. Ryan said you could? A. That's right.

Q. What did he say? A. He said "You can sit here if you want to."

Q. And you walked over and sat next to him? A. That's right.

Q. And how long did you sit there next to him? A. For approximately twenty minutes.

588 Q. And you have given us the complete conversation that took twenty minutes to talk about, is that right? A. He might have said, "How do you feel?" or something like that. I don't recall. That's the crux of the conversation.

Q. You also said that in answer to Mr. Foley's questions, that there were some statements made, or something? A. That's right.

Q. And corrections made? A. That's right.

589

Q. Were you reading these papers, too? A. No, I wasn't.

Q. Do you know what was on them? A. Yes.

Q. You didn't read them, though? A. No.

Q. Did they pass them around for everybody to read them? A. No.

Q. How long did that take? A. Half hour, three-quarters of an hour; perhaps an hour.

Q. And did they bring other papers back and have corrections made? A. I don't understand. What do you mean by other papers?

Q. Well, you mentioned something about a set of papers being brought in? A. That's right. 590
The stenographer brought the papers to Mr. Ryan. Mr. Ryan read the contents of the papers to Moore, and Moore made corrections. Mr. Ryan said he could make any correction he wanted.

Q. Oh, Mr. Ryan read the contents to Moore? A. And he gave the papers to Moore every time Moore wanted to make a correction.

Q. And you were there and heard Mr. Ryan read the contents of the papers to Moore? A. Yes, I did.

Q. Why were you looking down at that desk? Is there any special reason?

Mr. Foley: I object to that, if Your Honor 591
pleases.

The Court: I think that is an unfair observation. I have been looking directly at the witness——

The Witness: I have been looking at you.

The Court: —And he has been looking directly at you.

We will stop the discussion and proceed with the trial.

Q. Now, Mr. Ryan, when the Stenographer brought these papers back, he held it and read to George Moore, is that correct? A. He did.

Q. Where was Mr. Ryan seated or standing when he was doing all this reading? A. He was seated part of the time and standing part of the time.

Q. How far away from George Moore was he? A. A couple of feet.

Q. A couple of feet? A. That's right.

Q. And on occasions he was standing, you say? A. Yes, he got up off his chair.

593 Q. Did he raise his voice at any time? A. He never did.

Q. You are sure of that? A. Positive.

Q. After he read the contents of those pages to George Moore, did he ask him to sign them? A. He said to George Moore he could make any corrections he wanted and when George Moore made a correction he asked him would he initial it.

Q. Did he ask him to sign them? A. He did.

Q. When he had finished reading them? A. Yes, he did.

Q. And George Moore signed them? A. He did.

Q. Then did he draw up another set of papers? A. He did.

594 Q. Did he have the Stenographer go out and type them? A. He did.

Q. Then did Mr. Ryan read them to George Moore again? A. Yes, he did.

Q. And then did he hand them to him and ask him to sign them? A. He told him the same thing. He said: "You can make any correction you want," and every time Moore wanted to make a correction the papers were handed to him.

Q. And did he ask him to sign them? A. He did.

Q. And Moore signed them? A. Yes, he did.

Q. Now, did Mr. Ryan read in a loud voice or soft voice? A. He read in an average reading voice so that the man could understand what was being said. He didn't whisper.

Q. Has he a soft voice, Mr. Ryan? A. He has neither a soft nor a loud voice. He has a normal voice.

Q. He was only standing two feet from Moore at the time, wasn't he? A. He was sitting at his desk. Moore was at one side of the desk at the 596
corner of the desk. Mr. Ryan was sitting on his chair, swivel chair, faced toward Moore when he was reading. When Moore wanted to make a correction Mr. Ryan got up a couple of times and came closer to Moore.

Q. Were you seated right next to Moore when all this reading was going on? A. No. I was on the table while the reading was going on.

Q. And when did you get this statement from Moore; was that before he signed those papers or after?

The Court: Refer to the particular statement you are talking about.

Mr. Wilkinson: Yes. 597

Q. You have stated that you had a conversation with Moore and he made certain statements to you, is that correct? A. That's true.

Q. Did you have that conversation with him before Mr. Ryan read the statement to him or confession, whatever you call it? A. It was between the first and the second.

Q. Oh, between the first and second? A. That's right.

Q. Oh. Well, how much time expired between the first and the second? A. Perhaps a half hour.

Q. A half hour? A. Yes.

Q. And during that half hour, twenty minutes of that half hour you spent with Moore, is that right? A. That's right.

Q. Now, at the conclusion of the first statement, had you identified Moore? A. I wasn't asked to.

Q. And after the first statement were you asked
599 to go over and sit next to him? A. I was never asked to sit next to him. I was told I could.

Q. Were you asked to talk with him? A. No.

Q. Were you told you could talk with him? A. Yes, I was told I could talk with him.

Q. Who told you you could talk with him? A. Mr. Ryan.

Q. And after you talked with him for twenty minutes, did you go back and talk to Mr. Ryan? A. No.

Q. Well, did you tell Mr. Ryan what Moore had told you? A. Not then. I might have told him after I left the office and I don't recall telling Mr. Ryan at all about it.

Q. Well, did you tell anybody in the room? A.
600 Yes, I must have spoke to somebody.

Q. To whom? A. I don't recall.

Q. Did you think it was important what Moore said to you? A. I thought it was important to me that I was lucky enough to get away.

Q. Did you think it was important enough to tell the District Attorney? A. I believe I told Dr. Hochman, because he came over towards the

table and I was talking to him. I said: "What do you think of what the man told me?" He said: "You were lucky to get away because they would probably have used you as a shield."

Q. Well, now, did you tell Mr. Ryan that? A. I can't recall. If I told you it was yes, I wouldn't know. I might have.

Q. I mean it is fresh in your mind what occurred in the D.A.'s office on February 7th, isn't it? A. Yes, it is pretty fresh in my mind.

Q. You recall the statement that you say Moore made to you? A. That's right, I do.

Q. You thought it was important at the time the statement was made to you? A. Yes. 602

Q. Well, did you tell the District Attorney about it? A. I don't know.

Q. Is that your best answer? A. That's right.

Q. But, however, after he made that statement to you, Mr. Ryan proceeded to interrogate him again, didn't he? A. That's right.

Q. And how long did he question him then? A. I don't know how long after that.

Q. Were you there during the whole of the questioning? A. Yes, I was.

Q. Would you know how long approximately it took? A. Well, you have been asking me so many times I would have to have a watch out to remember every second it took. 603

Q. I am sorry, sir, but how old are you? A. I am thirty-seven, sir.

The Court: Never mind now. That is far enough. You must treat each other with courtesy.

The Witness: That is the second time he has asked me how old I am.

The Court: It makes no difference. You answer the questions.

Q. Have you any objections to answering questions in this case?

The Court: Just a minute.

A. None at all.

The Court: Just a minute, please. Continue with the trial. Personalities out.

605 Q. Was there a clock in the District Attorney's office? A. No.

Q. Did you have a watch on you at the time? A. I did.

Q. You estimated that you spoke with Moore for twenty minutes, did you not? A. That's right.

Q. Now I ask you to estimate the time it took for the second interrogation by Mr. Ryan. A. Can I review the entire thing back again?

The Court: No, no. Just answer that question.

The Witness: I would say it was approximately another three-quarters of an hour.

606

Q. And at the ~~end~~ of that three-quarters of an hour, were the papers brought in by the Stenographer again? A. It was some time after that that the papers were brought in.

Q. But you were still there? A. Yes, I was.

Q. And you heard Mr. Ryan read over the second batch of papers? A. That's correct.

Q. And he read them to George Moore? A. That's true.

Q. And when he had finished reading them to Moore, he asked Moore to sign them? A. That is right.

Q. And Moore signed them? A. He did.

Q. And you were still present? A. That's right.

Q. And after the second signing, did you leave then? A. Yes, some time after the second.

Q. Who told you you could leave? A. Nobody told me I could leave.

Q. Did you just walk out? A. That's right.

Q. Who asked you to stay there in the first place? A. Stay where? 608

Q. In the District Attorney's office. A. Mr. Ryan asked me to come in.

Q. And did he ask you to stay there during the questioning of George Moore? A. Yes, he did.

Q. But he never told you when you could leave? A. No. It was after he had been finished with George Moore, a lot of the men in the room, about four or five or six men, some of them walked out. I walked out also. It was after they had asked Moore, he was waiting for the other man to be brought in.

Mr. Fleischman: Your Honor, I object at this time and I move to strike out this testimony. 609

The Court: The Jury is instructed to disregard this.

Q. You just walked out of the District Attorney's office and left, is that correct? A. No. I went into the corridor. I didn't leave the building.

Q. You stayed there? A. That's right.

Q. What time was that? A. It must have been close to midnight.

Mr. Wilkinson: No further questions for Moore.

Cross-examination by Mr. McDonough.

Q. Mr. Shaw, you say that Mrs. Shaw got the license for this liquor store in May of 1945? A. In May?

Q. Is that what you said? A. No. I said we
611 opened the store in December. I think it was granted in August of 1945.

Q. Prior to that time did you or any member of your family have a liquor license? A. I had a liquor license in the State of Florida prior to entering the service.

Q. And then you came and your wife opened one in New York, is that right? A. That is true.

Q. How long had you had the liquor license in Florida? A. From 1941 until 1943, I believe, or May of 1944.

Q. And was that license ever revoked? A. No, it wasn't. The place was sold.

Q. Now, coming back to the night of December
612 13th, 1946, who was the first police officer that you saw on that occasion? A. I don't know the police officers by name, but it was a radio car that pulled up.

Q. And do you recall the rank of the officer? A. No, I don't.

Q. Well, did you have any conversation with this officer when he entered the store? A. Just to tell him that Detective Burke had been shot.

Q. Did you have a conversation with him, yes or no? A. Yes.

Q. Now, did you give him any of the details of what had happened? A. I can't recall.

Q. Did you give him any description of the men that had been in the store? A. I can't recall if I had given it to these two policemen who had come in.

Q. Now, you state that, I believe you said it was Monday that you were in court here or rather in the District Attorney's office and you had a discussion with some police officers that were there and you mentioned Sergeant Hess. A. 614
That's right.

Q. Do you recognize the Sergeant Hess with whom you spoke yesterday as the police officer that entered your premises on December 13th? A. I saw him in there. I don't know if he was there first.

Q. You are not sure of that? A. Oh, no.

Q. So that you are not sure that the officer who entered your premises after this occurrence on December 13th, 1946 was Sergeant Hess? A. No, I can't say for sure.

Q. Now, after the radio car got there, who was the next police officer who arrived? A. I think they came in a mob, detectives and cops and it seemed like everybody else. 615

Q. Well, did you speak with Detective Holt? A. Yes, I did.

Q. And did you tell Detective Holt the details of what had occurred that night? A. I did.

Q. And did you give Detective Holt a description of the two men who were in there? A. I gave a description of one. I second I said that I could not recognize.

616 *Richard Shaw—For People—Cross.*

Q. Now, the description or whatever you said concerning the men who were in the premises on December 13th, 1946 that you gave to Detective Holt, was there the same description that you gave to the police officer who first entered the premises? A. I told him I don't remember whether I gave the police officer the description or not.

Q. So that you are a little, your recollection is a little hazy on that point concerning what you told anyone on December 13th? A. No, it isn't hazy. I recall telling and being questioned by probably fifty men, but I don't recall if the first
617 two men that came in, the first two policemen, whether they asked or didn't ask or what I said. I do recall telling the others.

Q. Do your recall having a conversation with Sergeant Hess on that night, December 13th? A. I don't recall having a conversation with him, no. I recall him being there.

Q. And do you recall giving Sergeant Hess any description of the men who were in the premises? A. No, I don't. It was a general thing by that time. All these men had been in and they kept asking for the description. It was there for anybody to take down.

Q. I am speaking of the first officer that arrived. A. I told you I don't recall what happened with the first officers. All I know is that
618 it was a radio car.

Q. And you know Sergeant Hess, do you not? A. Yes, I do, by name.

Q. And you can't state now whether the first officer who arrived in that radio car was Sergeant Hess or not? A. No, I can't definitely.

Q. Now, on February 7th, 1947 in the District Attorney's office, what time did you arrive at the

District Attorney's office? A. At about nine fifteen or nine thirty, somewheres around there.

Q. And you left the District Attorney's office, I believe you said around five a.m., was it, of the morning of February 8th? A. Oh, I'm sorry. I have gotten that mixed up. Will you repeat the first question, please?

The Court: The Stenographer.

(The Court Reporter reads the question as follows: "Q. Now, on February 7th, 1947 in the District Attorney's office, what time did you arrive at the District Attorney's office?") A. About 620
three o'clock in the afternoon.

Q. At the District Attorney's office? A. That's right.

Q. On February 7th? A. That's right.

Q. Now, who asked you to come down to the District Attorney's office? A. Detective Foden.

Q. And did you accompany Detective Foden down to the District Attorney's office? A. I did.

Q. Now, on the way down to the District Attorney's office did you and Detective Foden have a conversation concerning the case? A. No, except that he said——

Q. Did you have a conversation? Yes or no. 621
A. Yes.

Q. And how long did it take you to get from—I will withdraw that. Where did Detective Foden call for you; was it at your home or— A. At the store, 1439 Webster Avenue.

Q. How long did it take you and Detective Foden to get from your store down to the District Attorney's office? A. About ten minutes.

Q. And during that ten minutes you did have a discussion with him concerning what you were going down to the District Attorney's office for, is that correct? A. Yes.

Q. Now, when you arrived at the District Attorney's office some time around three o'clock in the afternoon of February 7th— A. That's right.

Q. —where did you first go? A. Up to floor 6-M.

Q. 6-M? A. And into Mr. Ryan's office.

Q. And when you arrived there who was present? A. There was a colored man being questioned by Mr. Ryan. His name I don't know.

623

Q. And who else? A. Mr. Ryan was there, Detective Green was there, Detective Holt, I believe Captain Armstrong, Lieutenant Dinan. There was another man, I believe on the District Attorney's staff, I don't know his name. I believe he was in there.

Q. And was there a Stenographer present at that time? A. I don't think so.

Q. Now, were you told on February 7th before your arrival at the District Attorney's office that they had George Moore in custody? A. Before I arrived?

Q. Before you arrived. A. No.

624

Q. So that at the time you arrived at the District Attorney's office you didn't know that George Moore was in custody? A. I didn't know any George Moore at the time.

Q. Did they tell you the colored man that you saw in Mr. Ryan's office when you first arrived was George Moore? A. No, they did not.

Q. Coming back to December 13th, 1946, I believe you testified that you stayed around the

premises an hour or so and then you went down to the Rogues' Gallery. A. About two hours, I imagine. 625

Q. Two hours after that? A. That's right.

Q. How long did you stay down at the Rogues' Gallery? A. I judge it must have been close to five hours.

Q. Five hours and who was with you at that time? A. A detective. His name I don't know.

Q. And was it one detective who accompanied you down there? A. That's right.

Q. Could you give us any estimate as to the number of pictures that you examined? A. There must have been a thousand. 626

Q. You looked at a great number? A. That's right.

Q. And you couldn't identify any of the pictures? A. No, I couldn't.

Q. Now, on December 13th, you stated that Detective Burke got to your premises about five o'clock or five fifteen? A. About five fifteen.

Q. Was there anyone with him? A. Nobody.

Q. At any time up to the time that this incident occurred was there anyone with Detective Burke in the premises? A. I don't know what you mean up to this time. Do you mean on that same day?

Q. That same night. A. No. 627

Q. Up to six ten or so? A. No, nobody was with him.

Q. Now, when after December 13th did you discuss this case with any member of the District Attorney's office or of the Police Department? A. Well, that same night I saw Mr. O'Brien.

Q. That is December 13th? A. After I came from the looking at the pictures I was brought

up to the 48th Precinct and Mr. O'Brien was there.

Q. And is he a member of the District Attorney's staff? A. Yes, he is.

Q. And how long did you have a conversation with Mr. O'Brien concerning this matter? A. Well, I must have been there for close to two hours. How long I spoke to him about this particular thing, I don't know. He asked me what had happened.

Q. And when did you next have a conversation with any member of the District Attorney's
629 staff or the Police Department? A. Well, the Police Department kept calling me to look at different suspects. That was a rather continual thing. As far as talking with Mr. Foley, I never saw Mr. Foley until the night of the 7th. I saw Mr. O'Brien a couple of times when I was called down by the police to look at different suspects.

Q. Had there ever been a robbery in the premises before? A. There was a sneak robbery.

Q. Can you tell us what you mean by a sneak robbery? A. Well, my sister was in the store at the time. It was in the morning. Some kids rapped on a window with a ring. She went out to tell them to go away. While she was talking to them, some kid, probably around fourteen or
630 fifteen, took the money out of the cash drawer and ran. She came into the store and didn't realize that the money was missing until some time later.

Q. And did you make a complaint to the Police Department? A. I did.

Q. And were the persons apprehended? A. They never were.

Q. Were you present at the time that this happened? A. No, I wasn't.

Q. Any other occasion? A. Never.

Mr. McDonough: That's all.

Mr. Wilkinson: May I take him for one or two questions, sir?

The Court: On new matter?

Mr. Wilkinson: On matter developed in the cross by associate Defense Counsel.

Recross-examination by Mr. Wilkinson.

632 Q. Mr. Shaw, you know Detective Holt, do you not? A. Yes, I do.

Q. And he was in your store on December 13th, the evening of December 13th? A. Yes, he was there.

Q. And he had a conversation with you as to the description of the men involved? A. Well, he had a conversation along with perhaps fifty others. I mean it wasn't a personal thing. I didn't go on the side with him.

Q. Did you tell him that one of the men was five foot five, 145 pounds, light skinned, small mustache, tan, dirty polo coat? A. That is about what it was, yes.

633 Mr. Wilkinson: No further questions.

Redirect examination by Mr. Foley.

Q. Mr. Shaw, I want to direct your attention to the night of February 7th in the District Attorney's office. You were in Mr. Ryan's room on that night? A. Yes, sir.

Q. You were asked by Mr. Wilkinson about Mr. Ryan reading statements to Moore, two different statements. Did he raise his voice to Moore? A. No, sir.

Q. Did he conduct—did he do his reading in a normal conversational tone? A. As anybody would when he is reading to somebody and he wants them to hear.

Q. Did he shout or yell at Moore or raise his voice to him when he was asking him questions? A. No, he never did.

Q. Did you and Moore converse freely as you
635 sat at the table there between statements? A. We did.

Q. Speaking of the second statement, which Counsel said was taken after your conversation with Moore, do you know of your own knowledge who suggested making that statement? A. Mr. Ryan.

Q. And was that after statements made by Moore, conversation with him? A. I can't really recall whether that was in between the first and second statements or after the second statement.

Q. What I am directing your attention to, Mr. Shaw, is the circumstances under which the second statement was taken; do you remember them? A. Yes.

636 Q. Do you know whether Mr. Ryan suggested taking the second statement or did Moore?

Mr. Wilkinson: I object to that as already answered. The witness has already answered it.

The Court: Overruled.

Q. Do you remember? A. Mr. Ryan asked.

Q. And did you participate in or did you hear the conversation that preceded Mr. Ryan sending for the Stenographer to take the second statement? A. Yes, I did.

Q. What was said? A. Well, the first statement——

Mr. Wilkinson: I object to it unless in the presence and within the hearing of the defendant Moore.

Mr. Foley: I will fix that, if your Honor pleases.

The Court: Overruled.

Mr. Wilkinson: I respectfully except. 638

Q. You may answer it.

Mr. McDonough: If your Honor please, may I take an objection as to the defendant Haughton?

The Court: I have indicated to the Jury before that any conversations after the commission of the crime are received only as to the individual making the statement. I think the Jury have that by now. Proceed.

Q. Do you remember the question, Mr. Shaw? A. Yes, sir. 639

Q. Can you answer it? A. In Moore's first statement he denied using the gun. He did not deny that he was there.

Mr. Wilkinson: I am going to object to this characterization of a paper not in evidence, a statement alleged to have been made by the defendant Moore, and the characterizations by this witness of that statement.

The Court: I will sustain it. Ask him the direct question. I will permit the direct question whether he heard the defendant say that. So there will be no mistake, this is received as to the defendant Moore and not binding on the defendant Haughton.

Q. Mr. Shaw, after the first statement had been completed, did you hear any conversation in which Moore took part, which led to the taking of a second statement? A. Yes, sir.

Mr. Wilkinson: I object to that as calling
641 for a conclusion in the mind of the witness.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. What was it? A. Moore admitted to the using——

Mr. Wilkinson: I object to this.

Q. Say what he said.

Mr. Wilkinson: I move to strike it from the record.

The Court: Just a minute.

Mr. Wilkinson: I move to strike from the
642 record the conclusion.

The Court: Yes. The Jury is instructed to disregard it.

Q. What did he say? A. He said: "Yes, I killed him."

Q. And was it after Moore's saying that that Mr. Ryan again sent for a Stenographer? A. That is right.

Q. From the time the first statement was concluded to the time the second statement was made, was Moore continually in that room? A. He was.

Q. And were you in his presence all that time? A. Yes, sir.

Q. And were you a great part of that time sitting next to him? A. At the time I was sitting in back of him.

Q. Some part of the time between statements, I believe you— A. Between the signing of the two statements I sat next to him.

Q. Thank you.

644 Mr. Foley: That is all.

Recross-examination by Mr. Wilkinson.

Q. These answers that you have just made, did you make those answers when you testified here on direct testimony? A. I don't know just what you mean.

Q. Well, when you first took the stand— A. Yes.

Q. —you told us everything that happened in there to the best of your recollection, is that correct? A. Oh, no. You didn't let me tell everything that happened.

Q. What you have just testified to now, is that 645 something I didn't let you testify to? A. Well, you stopped me.

Q. Do you understand the questions? A. Yes, I do.

Q. Did I refuse to let you testify to that? A. No.

Q. You didn't tell us that on your direct examination, did you? A. You never asked that.

The Court: Wait a minute.

Mr. Foley: That wasn't asked.

The Court: Wait a minute. Go ahead. I said "wait a minute" anticipating an objection, but the witness answered before the objection.

Mr. Foley: I have no objection after the answer. Thank you.

Q. Were you taking part in the questioning in the District Attorney's office? A. No.

Q. Did you at any time talk to Mr. Ryan while
647 the questioning was going on? A. No.

Q. Did Mr. Ryan at any time talk to you? A. No.

Q. Did anyone talk to Mr. Ryan at any time while the questioning was going on? A. I imagine so.

Q. Well, will you tell us who you imagine spoke to him? A. Well, there was a man in there whom I believe was in the District Attorney's staff; I don't know. I don't know him by name. He whispered to Mr. Ryan a couple of times.

Q. Is he the only one? A. As far as I can recall.

Q. Did any of the police officers talk to him? A. To Mr. Ryan? I don't think so, not while he
648 was questioning him.

Q. Did Mr. Ryan leave the room at all? A. No, he did not.

Q. Did you leave the room at all? A. No.

Q. What was the extent of the time you were in that room from the first time when you went in there until you left; how many hours or minutes did it consume? A. I had been in there in the afternoon. I don't understand your question, be-

cause I had been in there when I first came in at three o'clock. If you mean after I——

Q. How long did you stay from three o'clock on? A. From three o'clock on I was in there for perhaps an hour; then went out in the corridor and hung around there and hung around until probably quarter of eight or thereabouts, when I saw Moore. After he was in the District Attorney's office for perhaps an hour I went in and I never left there until after eleven, perhaps close to midnight.

Q. Until both statements had been taken— A. That's right. 650

Q. —is that correct? Well now, after Moore signed this first statement did Mr. Ryan say: "I want another statement from you?" A. No, he did not. He didn't say: "I want another statement."

Q. Did he say: "You can all go home now"? A. No, he didn't.

Q. Did he say he wanted a second statement? A. He didn't ask for a statement at all.

Q. But he told you you could sit next to Moore? A. After he had taken the second statement, yes.

The Court: I assume you are all finished. You may step down.

Mr. Wilkinson: I am finished, yes. 651

Mr. Fleischman: That is all, Judge.

(Witness excused.)

Mr. Foley: I have sent around for the witness, your Honor. It is a material witness, detained in my office. He must be brought around here.

The Court: I understand.

Mr. Foley: It ended more abruptly than I expected.

ADOLPH ERNEST CLARK, a witness in behalf of The People, having been first duly sworn, stated that he resided at 241 West 135th Street, Manhattan, and testified as follows:

Direct examination by Mr. Foley.

Q. Are you at present confined in the Bronx County Jail as a material witness? A. That's right.

Q. When did you go in? A. February the 8th.

Q. Do you know the defendant Moore? A. Right.

653 Q. Pardon? A. Yes.

Q. How long have you known him? A. A little over a year.

Q. By what name do you know him? A. Stack.

Q. That is a nickname? A. Nickname.

Q. Do you know the defendant Haughton? A. Yes.

Q. How long have you known him? A. About fifteen years.

Q. And by what name did you know him? A. Raymond.

Q. Let me ask you again, please; because I have forgotten. How long do you know Moore? A. A little over a year.

654 Q. Did you see these defendants frequently? A. Yes.

Q. Where? A. In the vicinity of 135th Street.

The Court: 135th Street and where?

The Witness: And Eighth Avenue.

Q. Did you ever come to Bronx County in the company of the defendant Haughton? A. Once.

Q. When was that as nearly as you can fix?

Mr. Wilkinson: Now I object to this, if the Court pleases, not binding upon the defendant Moore.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

A. Well, it was, I guess, around the first week in December.

Mr. Foley: And may I have the picture exhibit, please?

The Court: December of last year, Mr. Witness?

The Witness: Yes. 656

Q. Were you familiar with The Bronx? A. No.

Q. You came here with Haughton? A. Right.

Q. Do you know where Haughton lived at that time? A. I know he lived in The Bronx, that's all.

Q. You don't know what street? A. No.

Q. I show you People's Exhibit number 7 in evidence and ask you if, while you were in The Bronx on that day, you saw that store? A. I saw a store. It could be the store, I mean, but I wouldn't say for guarantee that was the store.

Q. Well, did you have a conversation with Haughton about the store that you did see? A. Yes. 657

Mr. Wilkinson: I object to any conversations as not binding on the defendant Moore, not in his presence, immaterial, irrelevant and incompetent, and not connected in any way with the defendant Moore.

The Court: Are you going to connect it up in any way?

Mr. Foley: I wouldn't be sure, no, sir. I will offer it as against Haughton only at this time.

The Court: All right.

Mr. Fleischman: I object as to any testimony along this line, your Honor, on the ground that there is no relevancy.

The Court: What is the purpose of this?

Mr. Foley: I am sorry, if your Honor pleases. It will be connected definitely.

The Court: What is the purpose of it?

Mr. Foley: The purpose is to show that
659 the defendant Haughton pointed out and discussed this store a week prior to the hold-up.

The Court: I will receive it as to both defendants.

Mr. Fleischman: If your Honor pleases, I object to the statement of the District Attorney, summing up before he has to sum up, and I move to strike it from the record.

The Court: Denied. I asked him the question.

Mr. Wilkinson: I object to the statement of the District Attorney as prejudicial to the defendant Moore.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.
660 The Court: Proceed.

Mr. Fleischman: Exception.

By Mr. Foley.

Q. Did you have a conversation with the defendant Haughton about the liquor store that you did see? A. Yes.

Mr. Wilkinson: I understand I have an objection in behalf of Moore with reference to this conversation.

The Court: So I understand.

Mr. Wilkinson: And the Jury is to disregard it as far as the defendant.

The Court: No. I am receiving it as to both.

Mr. Wilkinson: As to both? I respectfully except.

Mr. Fleischman: I object to that question, if your Honor pleases, on the ground that it is leading the witness. I will ask Mr. Foley not to lead the witness. 662

The Court: Overruled. Proceed.

Mr. Fleischman: Exception.

Q. What did you say to him and what did he say to you? Tell us what was said about that store. A. Well, he said it looked like an easy store to stick up and take over.

Q. What else? A. Well, he said: "It looks easy," and we went on back downtown.

Q. What did you say? A. That is what I said: "It looks easy."

Q. Was there any further conversation about it? A. No.

Q. Did he ever discuss it or mention it again in your presence? A. Not until the day of Friday the 13th. 663

Q. Where were you when that conversation took place? A. I was in the pool room between 134th and 135th Street on Eighth Avenue.

Q. What time did you get there that afternoon? A. I don't know. It was early in the afternoon. I don't know exactly what time.

Q. Was Haughton there when you got there? A. That I don't remember.

Q. Was he there while you were there? A. That's right.

Q. Was Moore there when you got there? A. I don't know whether he was there when I got there or not, but he was there during the time.

Q. At what time during the afternoon did you have any conversation with Haughton about this liquor store in The Bronx?

Mr. Wilkinson: I object to it as not binding upon the defendant Moore, not connected in any way.

664

The Court: Overruled.

Mr. Wilkinson: Not in the presence of the defendant Moore. I respectfully except.

Q. Do you know about what time in the afternoon this store was mentioned? A. Between four and five o'clock.

Q. How do you fix that time? A. While waiting for the last figure of the policy number to come out, the conversation took place during that time.

Q. What was the conversation? A. The conversation mostly at that time was about the

666 figures, the numbers, and a few minutes before the last figure come up we started talking about ways of making some money. After the last figure came out, everybody was practically broke, so then they discussed this situation in The Bronx.

Q. Who was there at that time? A. Haughton, I and Stack.

Q. When you say Haughton, you mean the man I have called Haughton (Howton)? A. That's right.

Q. One of the defendants here, and by Stack you mean Moore, the other defendant? A. That's right.

Q. Tell us what the discussion was between you three around five o'clock on the afternoon of the 13th of December, 1946? A. Well, we talked about coming up to The Bronx and sticking, taking over the liquor store; so it was decided upon and Stack left out, came back about twenty minutes later and we started to go.

Q. Do you know why Stack had left you? A. He said he is going to get the pistol.

Q. And when he came back did he say whether 668
he had it or not? A. He said he had it.

Q. And then you left the pool room there? A. That's right.

Q. And started for The Bronx? A. That's right.

Q. Was Haughton going along? A. That's right.

Q. And Moore? A. That's right.

Q. And you? A. That's right.

Q. How far did you go with them? A. Well, about three-quarters of the ~~block between~~ Eighth and St. Nicholas Avenue on 135th Street towards the subway.

Q. What happened there? A. So Stack said— 669
I didn't have no carfare, so he said: "No use in your going." So they decided I come back and they went up.

Q. Up to that time you were going to go with them, weren't you? A. Correct.

Q. And take part in the stick-up of the store? A. That's right.

Q. Did Stack, the defendant Moore, and Haughton continue toward the subway after you

stopped? A. Well, I left them. They were going towards the subway and I turned around and came on back towards Eighth Avenue.

Q. Now, which one, Stack or Haughton, is the first one you next saw? A. The next one I saw was Stack.

Q. And where did you see him? A. In his room.

Q. Where was his room? A. 136th Street.

Q. Do you know the address? A. 319.

Q. About what time was it as nearly as you can fix it that you saw Stack? A. It was anywhere
671 from seven thirty to nine, anywhere through there. I don't know exactly.

Q. When you went to his room what did you observe about him? A. I observed he was in great pain. He was injured.

Q. Did you have a conversation with him? A. Yes.

Q. What was it?

Mr. Fleischman: I object to this, your Honor, on the ground it is not binding.

The Court: Received as to the defendant Moore only, not as to the defendant Haughton. Proceed.

672 Q. What did you say to Stack and what did he say to you when you got to the room? A. He told me he had been shot and he thinks he had killed a man, so he had said, he told me to probe and feel around and see if there was a bullet still in his arm, which I did. Then he sent me, he told me to go over to his brother's house, borrow some money to get some peroxide and stuff to fix his arm with.

Q. Well now, did you look at his arm when you were there on that visit? A. Yes.

Q. Did you observe any wounds in his arm? A. Yes.

Q. How many? A. Two.

Q. Where were they? A. On the left arm.

Q. What parts of the arm? A. One was on the forearm and one was on the upper.

Q. When he asked you to go to his brother's, did you know whom he meant? A. Yes.

Q. Who was that? A. Joe Brown.

Q. Did you leave Stack's room to go to Joe Brown? A. Yes. 674

Q. Did you take anything with you when you left? A. I took the clothes.

Q. What clothes?, A. The clothes that he had wearing, been wearing and he told me to "take those out and get rid of them as soon as you can."

Q. Did you look at the clothes? A. Yes.

Q. What clothes did you take? A. Overcoat, sport shirt, suit coat.

Q. And what did you observe about the overcoat? A. He had two bullet holes in the overcoat.

Q. Were they in the left arm of the coat? A. Left arm.

Q. One in the upper and one in the lower? A. Well, yes.

Q. Was there any blood on the coat? A. I 675 didn't notice much blood on the overcoat, no.

Q. Was there blood on the under coat? A. Yes.

Q. And was there blood on the sport shirt? A. Yes.

Q. What did you do with those clothes? A. Took them around to my house.

Q. Did you leave them there? A. What, sir?

676 *Adolph Ernest Clark—For People—Direct.*

Q. Did you leave them there? A. Yes, sir.

Q. Where did you go from there? A. I went around to Joe Brown's house.

Q. Did you have a conversation with Joe Brown? A. Not immediately; not until after I came from his house. I told him that——

Q. Don't say what you told him. When you went to Brown's house you talked with him, didn't you, spoke to him? A. That's right.

Q. Did you and Brown leave his house then? A. That's right.

Q. Where did you go? A. We came up 134th
677 Street to Seventh Avenue and stopped in the drug store.

Q. What did you do there? A. Bought some bandages and peroxide and band-aids, something like that. From there I went back around Stack's house.

Q. Did Joe Brown go back with you? A. Yes.

Q. Did he come up into Stack's room? A. Yes.

Q. And was there further conversation there at that time between you and Moore or Brown and Moore? A. Yes.

Q. Can you remember what it was and tell it to us?

Mr. Fleischman: I object to any conversa-
678 tion, your Honor, on the ground it is not binding on the defendant Lester Haughton.

The Court: I have already instructed the Jury on that. Proceed.

Q. Tell us what was said as nearly as you can remember.

Mr. Fleischman: Excuse me. Did your Honor make a ruling on my objection?

The Court: I have done that several times, haven't I, with respect to the Jury? This is received only as to the defendant Moore, not as to the defendant Haughton.

Q. Can you remember the question now, Clark? A. Yes. You asked me about the conversation.

Q. Yes. What was said up there? A. Well, Joe and I came up there and in the meantime we were talking about what happened. He said the same thing. He said he thinks he killed a fellow in The Bronx.

Q. When was the next time that you saw— 680
when I say next time, I mean after you parted with Stack and Haughton at 135th Street in the evening, when was the next time you saw Haughton? A. It was that Sunday, early Sunday in the afternoon or on Saturday afternoon; I can't remember exactly.

Q. Well, you left them on 135th Street some time after five o'clock on December 13th, is that correct? A. That's right.

Q. And you say you saw Moore somewhere between half-past seven and nine? A. That's right.

Q. That same Friday night? A. Yes.

Q. When did you next see Haughton? A. I seen him early Saturday morning.

Q. Was that before you had gone to bed after 681
seeing Moore? A. That was before.

Q. And where did you see him? A. Well, it was in a club on 134th Street and Eighth Avenue.

Q. Is that a club down in the basement? A. That's right.

Q. Has it got a name? A. The Methoma Social and Athletic Club.

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Q. Do you know about what time it was when you saw Haughton? A. Well, maybe it was after twelve o'clock.

Q. Beyond that you can't fix it? A. No.

Mr. McDonough: Pardon me; twelve o'clock when?

Mr. Foley: Friday night midnight, the witness testified.

The Witness: That is Friday midnight.

Mr. McDonough: After Friday midnight?

Mr. Foley: Yes.

683 Q. Did you have a conversation with him in that club? A. Yes.

Mr. Wilkinson: I object.

The Court: This is received only as to defendant Haughton, not as to the defendant Moore.

Q. What was it? A. He called me aside and gave me the pistol and told me to take this thing.

Q. Yes. A. Otherwise than that he didn't have much to say. He told me he heard about it on the radio.

Q. Did you take the pistol? A. That's right.

684 Q. What did you do with it? A. Took it home.

Q. And put it in your room? A. That's right.

Q. How long did it stay there? A. Till late Sunday afternoon.

Q. And at that time what did you do with it? A. Gave it to Banks.

Q. Is Banks the man who is known in that neighborhood as Mack? A. Right.

Q. Now, what did you do with the clothes belonging to Moore that you took from his room on

the night of the 13th? A. I left them there for a few days; I don't know.

Q. When you say you left them there, do you mean you left them in your room? A. Left them in my room.

Q. Yes, and then? A. I took them. I met a pal named Dupre on the corner Eighth Avenue and 135th Street, so I told him——

Q. You can't say what you told Dupre or what he told you. You had a talk with Dupre? A. That's right.

Q. Was it about the clothes? A. That's right.

Q. After you had that talk what did you do? 686
A. We took the clothes up to 142nd Street and Eighth Avenue.

Q. Yes. A. There we burned them in a basement.

Q. Here is People's Exhibit 12 in evidence. Can you tell whether or not that is the gun that Haughton gave you on the night of the 13th? A. No, sir.

Q. Does it look like it? A. Yes, a forty-five.

Q. It is a forty-five? A. Yes, sir.

Q. The same shape? A. Same shape, same make.

Q. The same make? A. I mean the same, it is automatic.

687

Mr. Foley: All right; your witness.

Cross-examination by Mr. Wilkinson.

Q. How old are you, Clark? A. Twenty-four.

Q. How old? A. Twenty-four.

Q. Keep your voice up. Are you married? A. No.

Q. Single? A. That's right.

Q. Where do you live? A. 241 West 135th Street.

Q. With whom do you live there? A. I room there.

Q. How long have you roomed there? A. I have been rooming there since last August.

Q. What is your record, Clark? A. My record? I was convicted.

Q. Wait a minute now. When were you first convicted? A. January of last year.

Q. Yes. The court? A. What do you say?

689 Q. What court was that? A. Long Island City.

Q. What was the charge? A. Grand larceny, burglary.

Q. Have you any others? A. I was on a charge. I am on a charge now down the Tombs.

Q. What is that charge? A. Burglary.

Mr. Foley: I object, your Honor please. That is a charge and not a conviction. The man has given his conviction.

Mr. Wilkinson: May I see his record, Mr. Foley?

Mr. Foley: Why, of course.

Mr. Wilkinson: Thank you. (Mr. Foley hands paper to Mr. Wilkinson.)

690 Q. Are you on probation from the Queens County Court? A. That's right.

Q. How long is your probation? A. I don't know.

Q. When were you sentenced? A. Some time last January.

Q. Have you been reporting to the probation officers? A. No.

Q. You never reported after you were put on probation? A. I reported a few times and stopped reporting.

Q. You stopped reporting of your own accord? A. That's right.

Q. You have been telling us the truth here? A. That's right.

Q. Did the District Attorney tell you that you were in trouble in this matter yourself? A. Well, he said I could be charged for accessory after the fact.

Q. And did he tell you you could be charged with murder? A. No. 692

Q. Did the cops tell you that? A. No.

Q. But he did tell you you could be charged with an accessory after the fact? A. That's right.

Q. Did he tell you what you could get on that? A. No.

Q. Did you ask him? A. No.

Q. Is he going to charge you with that? A. I do not know.

Q. Did he tell you if you testified that he wouldn't charge you with it? A. No.

Q. Where are you staying now? A. I am over The Bronx County Jail.

Q. Have you got some more friends of yours over there? A. Only one friend of mine over there. 693

Q. Who is that? A. He is a witness in this case too.

Q. Oh, is he? What is his name? A. Brown.

Q. Are you together over there? A. We are.

Q. Have you been up to the District Attorney's office, preparing this case? A. I have been up there, yes, sir.

Q. How many times did you go up there? A. Twice, I believe, I have been up there.

Q. Have they been over to see you over in jail? A. No.

Q. Have you been out of jail at all? A. Not only for those times.

Q. And where were you taken those two times? A. To the District Attorney's office.

Q. Anywhere else? A. After I might have stopped in the drug store and back to the County Jail.

Q. Did you go over this testimony with anybody? A. I discussed the testimony with Mr. Foley.

695

Q. Did you discuss it with anybody else? A. A fellow that was in jail with me.

Q. Brown? A. Yes and the rest of the witnesses that was in there.

Q. Are you all together over there? A. That's right.

Q. How long have you been over there? A. About forty some days.

Q. How many? A. Five of us.

Q. You are all on the one tier? A. That's right.

Q. And you discussed it among the five of you just what you were going to testify to? A. No, just discussed the case in general.

696

Q. How long had you known Stack? A. Well, I have been palling around with him. I met him in forty-four, but I have been knowing him personally for the last year or so, over the last year after I got out on probation from over Long Island City.

Q. You said you were up in The Bronx here? A. Once.

Q. And looked the place over? A. Once.

Q. Did you look it over with an intention of sticking it up? A. It was discussed, but the matter was dropped, because that was about a week or ten days before that.

Q. But when you came up and looked it over, what were your intentions? A. We had came up to see some girls and after there was a disappointment there, we walked up. I asked Raymond to walk up and see the place.

Q. What did you intend after you looked it over? A. I didn't—I said: "It looks easy."

Q. What do your mean "it looks easy"; what do you mean by that? A. It was in a—it was situ- 698
ated in a way that it was by itself. It had all the aspects of being an easy job.

Q. What do you meap, an easy stick-up? A. Yes.

Q. Do you know anything about stick-ups? A. Yes.

Q. You have have been in on some? A. One.

Q. Is that the one in Queens? A. No.

Q. Another one? A. Yes.

Q. Were you in on a stick-up of the liquor store at 1430 Webster Avenue on the night of December 13th, 1946? A. No.

Q. You knew the place, didn't you? A. I had been by there once.

Q. And when you were by there once you had 699
cased it with a possible outlook of taking it over, didn't you? A. Walked by there once and turned the corner—right near there.

Q. But when you viewed it, you viewed it with the possibilities of taking it over, is that correct? A. That's correct.

Q. Have you got any grievances against Stack? A. No.

Q. Is he a friend of yours? A. What?

Q. Is he a friend of yours? A. Yes.

Q. You don't want to hurt him, do you? A. No.

Q. You don't want to hurt yourself either, do you? A. No.

Q. Did you make a deal in this case? A. No.

Q. Do you know what I mean by a deal? A. Yes.

Q. Did you have a talk with the District Attorney about letting you go on this deal for your testimony? A. No. He didn't promise me anything.

701 Q. Did anybody promise you anything? A. No.

Q. What detectives have you been talking to on this case? A. There have been a lot of detectives on the case that I met. I was brought up from the Tombs to the D.A.s one evening. That's all.

Q. Any special detectives that you have become pretty well acquainted with while you have been over in The Bronx here? A. I haven't become acquainted with any of them. I just know them by sight, that's all.

Q. How many times have you talked with Mr. Foley on this case? A. Twice.

702 Q. On either occasion did you discuss the possibility of your being indicted on this case? A. No.

Q. Did he mention that you might be indicted? A. No. That was mentioned Friday, the night of the 7th.

Q. He mentioned it to you then? A. He didn't question me that night. The question was, the

possibility of my being indicted in the case too was mentioned by, I think it was Assistant District Attorney Ryan.

Q. What did he say about it? A. He was talking I could be charged mal de facto and accessory after the fact.

Q. Did you tell him you wouldn't like to be charged with that? A. I didn't say anything to him.

Q. Did he ask you if you would like to be charged with that? A. No, he did not ask me that.

Q. After he told you that did you begin talking 704
to him? A. No.

Q. When did you start talking to him? A. After the confession.

Q. After what confession? A. After Moore had confessed it all and told it all.

Q. Who told you about any confession? A. Well, it stood to reason when I come in there.

Q. Well, who told you about any confession? A. Who told who about confession?

Q. Who told you? A. Everybody knew the man had confessed.

Q. Well, who told you? A. Detectives told me and the D.A.

Q. What did the detectives tell you? A. Moore confessed to the shooting and tried to blame it 705
on Ray.

Q. Tried to blame it on whom? A. Ray.

Q. Who told you that? A. The detectives told me.

Q. You know Ray, don't you? A. Yes.

Q. Is he a friend of yours? A. Yes.

Q. So after your heard what the detectives told you, so then you gave them a story, is that right? A. No.

Q. You began talking? A. No.

Q. When did you begin talking? A. I was brought into the office and the man questioned me in regards to when it was I got the gun back from Ray. That is when I told him. He asked me when I got it and I told him and every fifteen or twenty minutes he would call me back in. After he learned more he would call me back and ask me some more questions.

Q. Who was the man that was doing all the questioning? A. Mr. Ryan, I believe his name is.

Q. You started answering his questions after
707 the detectives told you? A. No. After I was brought in and he hit me with that question.

Q. Who hit you? A. Mr. Ryan.

The Court: Now, Counsellor, he was hit with a question.

Mr. Wilkinson: All I heard was hit.

The Witness: He hit me with the question, I said.

Q. You were hit with a question, you say? A. Well, I know when he asked me that question Moore must have confessed, because up to that time he didn't know about no connection with the gun.

708 Q. Anybody hit you with anything else? A. Nobody hit me. They didn't hit nobody.

Q. Who told you to give that answer? A. Give what answer?

Q. That you just gave. A. I gave myself.

Q. Did you see everybody concerned with this case on that night? A. Yes.

Q. Did you see George Moore? A. Yes.

Q. How long did you see him that night? A. I seen him off and on. I seen him off and on during the course of the night.

Q. Where did you see him? A. D. A.'s office; the Assistant D. A.'s office, whoever it was.

Q. Where were you, in and out of the room? A. They have a line of offices up there. It was me in one office. It was another man in another office.

Q. Each man was in a different office? A. They were doing all the questioning in one office. They were detaining us in different offices.

Q. Anybody stay with you in the private office? 710
A. A detective standing there.

Q. You couldn't go out and back as you wanted to? A. Oh, no.

Q. Well, now, you say that you didn't make any statement to the District Attorney at all until the detective told you Moore had confessed, is that right? A. I admit to what they knew. When I was confronted with what they knew, I told them I admitted to that.

Q. But before you received information from the detective that Moore had confessed, you didn't tell them anything, is that right? A. I admit to what they knew.

Q. You mean as they would ask you something, you would admit it? A. What they knew. When 711
they brought me into the office that is what I admitted to knowing.

Q. In other words, you didn't tell them anything other than what they knew? A. That's right.

Q. You stated that you were down in Harlem with George on the night of December 13th, is that it? A. That's right.

Q. And who suggested this Bronx job? A. Who suggested it?

Q. You didn't, did you?

Mr. Foley: I object.

A. I could have.

Mr. Foley: I object, if your Honor pleases, I think that question is misleading, on the night of the 13th who suggested the job.

Mr. Fleischman: Your Honor please, the witness already answered the question.

713 The Court: The witness apparently understood it and answered.

Mr. Foley: I am sorry. Might I have the answer read, because I didn't hear it?

The Witness: It was a three way conversation. I don't know who mentioned the fact about coming to The Bronx.

Q. But you could have suggested The Bronx job? A. Certainly.

Q. Then following your suggestion you say that the other boys agreed with you, is that right? A. If it was my suggestion, yes.

Q. And at any time on the night of December 13th did Moore ever say that he had known where 714 1439 Webster Avenue, Bronx, was? A. No.

Q. He didn't know anything about that address, did he, as far as you knew? A. As far as I knew.

Q. Now, you say he had this gun on that night, is that right? A. I said he said he had it.

Q. He said he had it? A. That's right.

Q. You didn't see him with it though? A. No.

Q. You don't know whether Moore had that gun on that night or not? A. I just took for granted he had it.

Q. Oh! A. I did not see it.

Q. On December 13th, 1946 or any day thereafter did you see George Moore in possession of that gun that the District Attorney showed you? A. No.

Q. At no time on December 13th or thereafter? A. No.

Q. Now, you say you were with them in Manhattan, is that right? A. That's right.

Q. And the three of you parted in Manhattan, 716
is that correct? A. That's correct.

Q. And where did you go? A. I went back around 134th Street and Eighth Avenue in the club.

Q. And you left them on some corner was it? A. Not exactly a corner. It was near the subway on 135th Street.

Q. Did you have that gun in your possession at any time on December 13th, 1946? A. Not till after twelve o'clock that night.

Q. Did you have it before twelve o'clock in your possession? A. No.

Q. Did the gun look familiar to you? A. I had seen it once.

Q. Had you ever fired that gun? A. No. 717

Q. Had you ever tried it? A. What do you mean, tried it?

Q. Put cartridges in the clip and fired it. A. No.

Q. Had you ever put cartridges in the clip? A. No.

Q. Did you know whose gun it was? A. I knew who it was supposed to belong to.

Q. To whom did it belong? A. A fellow called Mack.

Q. You knew it was Mack's gun? A. Yes.

Q. But at no time on December 13th or thereafter did you see that gun in the possession of George Moore? A. No.

Q. And you say you had that gun in your possession after midnight of the 13th of December? A. That's right.

Q. Did you have that gun in your possession about five or six o'clock on the night of December 13th, 1946? A. Five or six o'clock that night? No.

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Q. Were you at premises 1439 Webster Avenue, Bronx, approximately at six o'clock on the night of December 13th, 1946? A. No.

Q. You have got an alibi, haven't you? A. No more than I was in the club around the avenue.

Q. Have you got an alibi for December 13th, 1946 at six o'clock? A. I was down in the club.

Q. What club? A. The Methoma Social Athletic Club, 134th Stret and Eighth Avenue.

Q. What time did you get to the club? A. It was a little bit after they left for The Bronx.

Q. Well now, what time did you get to the club? A. It could have been five-thirty. It could have been twenty to six. It could have been six

720 o'clock.

Q. And how late did you stay at the club? A. Stayed until I got a message from Stack.

Q. What time was that? A. It was from, anywhere from seven thirty to nine o'clock. I don't know. Anywhere between there.

Q. Whom were you with at the club? A. Different fellows at the club. They all know the club.

Q. What is his name? A. Mitchell.

Q. Mitchell? A. Yes.

Q. Is he the owner of the club? A. I suppose may be.

Q. Do you know him very well? A. Yes.

The Court: What is Mitchell's first name?

The Witness: William Mitchell.

The Court: Proceed.

Q. What do you know him by? A. I know him by Boogie Man.

Q. What is his name? A. William Mitchell. We call him Boogie Man. 722

Q. He is the man that would say you were at the club that night? A. If he remembered the night.

Q. Is there any other person that would know you were at the club that night? A. Well, there is fellows down there; I mean, I can't name them offhand.

Q. Did you know that they were looking for a light skinned colored man in this case? A. No.

Q. You didn't know it? A. No.

Q. Did you ever hear of it? A. No.

Q. Did you know that the clerk said that a light skinned colored man came into the store about six o'clock or five forty-five? A. I did not 723 know what the clerk said.

Q. You are familiar with the store at 1439 Webster Avenue in the County of Bronx, are you not? A. No.

Q. Were you ever in that store? A. No.

Q. How many times were you outside the store? A. I walked by the store once.

Q. Do you feel you are involved in this case at all? A. Yes.

Q. You do? In what way are you involved in this case? A. Knowing too much about it.

Q. That is the only way you are involved in the case? A. I could be charged in the case too.

Q. You what? A. I could be charged in the case too.

Q. You could be charged? A. That is what I figure.

Q. You don't want to be charged, do you? A. Well, come what may.

Q. You figure you might be charged with murder in this case? A. No.

725 Q. As an accessory? A. Right.

Q. Are you fairly well known around 135th Street and Lenox Avenue? A. Lenox Avenue?

Q. Yes. A. No.

Q. What avenue? A. Eighth Avenue I hang around.

Q. Eighth Avenue, you hang out where? A. On Eighth Avenue.

Q. And 135th Street? A. 134th, 135th, 133rd.

Q. Did you ever have a mustache? A. Sure.

Q. When did you cut it off? A. I have shaven it off, trying to shape it up.

Q. When did you cut it off? A. While I was over The Bronx County Jail.

Q. That is since you are in as a material wit-
726 ness in this case, is that correct? A. Yes, sir.

Q. Did you know that they were looking for a light skinned colored boy with a mustache? A. No, I didn't.

Q. You didn't know that? A. No.

Q. And you cut yours off since you were in the County Jail? A. That's right.

Mr. Wilkinson: That is all.

Cross-examination by Mr. Fleischman.

Q. Clark, what other names are you known by other than Clark? A. Adolph.

Q. Do you have any other names? A. I have no nickname. Some people call me Red. Some people call me Oakland.

Q. Were you born with the name of Clark? A. That's right.

Q. Never been known by any other name during your— A. Jantys is my mother's maiden name.

Q. How long were you known by that name? 728
A. Up until September, 1941.

Q. And then you changed your name to Clark? A. I acquired my birth certificate for Civil Service job and I had to use the name of Clark.

Q. When was the last time you worked? A. Well, some time in the fall.

Q. Of what year? A. Forty-six.

Q. Where did you work? A. A restaurant.

Q. What is the restaurant? A. Reddick's Restaurant, 137th and 138th Street on Eighth Avenue.

Q. What date do you say you started working there? A. I didn't say.

Q. What date did you start working? A. I don't remember. 729

Q. Was it September? A. I don't remember.

Q. How long did you work there? A. About three weeks.

Q. Have you had a job since that date? A. No, I haven't.

Q. When was the last job you had before that date? A. I had no steady job before then.

Q. Did you work at all before that? A. Off and on. I worked a day here, a day there.

Q. Did you ever own your own revolver? A. Yes.

Q. When did you have a revolver of your own? A. I was in the merchant marine. I had a small pistol.

Q. You were in the merchant marine when? A. During the war years.

Q. How long were you in the merchant marine? A. February of forty-two to forty-five when the war ended.

731 Q. What did you do with that pistol when you came out of the merchant marine? A. I didn't have it when I came out of the merchant marine.

Q. You owned a pistol before you went into the merchant marine, isn't that right? A. That was during the time I was in the merchant marine, if you are referring to the pistol——

Q. Wait a minute.

Mr. Foley: Just a moment.

Mr. Fleischman: Your Honor, I asked the witness if he owned the pistol before he went in the merchant marine. He can answer yes or no.

The Court: He must answer questions.

732 Repeat the question.

(The Court Reporter reads question as follows: "Q. You owned a pistol before you went into the merchant marine, isn't that right?")

The Court: Answer that question.

The Witness: No.

Q. Now, December 13th you claim you went as far as 135th Street and Eighth Avenue, is that

correct? A. Between Eighth and St. Nicholas Avenue on 135th Street.

Q. And then there was some conversation about who would go to The Bronx? A. That's right.

Q. Was any conversation had about the fact that you were going to be cut in on the proceeds of this thing? A. No.

Q. Were you told to wait down in the club room until you got a call? A. Yes.

Q. Did you figure you were being cut in on the proceeds of this thing? A. That I didn't know.

Q. When you were told you couldn't go, you didn't just raise any argument at all? A. I didn't 734
have the carfare, so I decided I was not to go.

Q. Are you sure you weren't up at that liquor store on that night? A. Positive.

Q. At five thirty? A. Positive.

Q. You would call yourself a light skinned negro, wouldn't you? A. That's right.

Mr. Flesichman: That's all.

Mr. Foley: That is all. No questions.

(Witness excused.)

The Court: You are admonished by the Court not to discuss the case, not to form any opinion until the matter is submitted to you by me. Gentlemen, I cannot reach you very well before eleven o'clock, so you don't 735
have to get here until about five minutes to eleven in the morning. That is the best I can do. There are other matters before this case. Five minutes to eleven tomorrow morning. Remanded.

(Whereupon the further trial of the case was adjourned until March 26th at eleven a.m.)

New York, March 26, 1947.

(TRIAL CONTINUED)

Before: Hon. James M. Barrett, County Judge, and a Jury.

Appearances: The same as heretofore noted.

(The Jurors were called individually by name and each answered.)

737 JOE BROWN, a witness in behalf of The People, having been first duly sworn, stated that he resided at 108 West 134th Street, Manhattan, and testified as follows:

Direct examination by Mr. Foley.

Q. Brown, are you at present confined in The Bronx Conty Jail as a material witness? A. Yes, sir.

The Court: You must answer the questions asked and answer loud enough so that these gentlemen can hear you.

738 The Witness: Yes, sir.

The Court: Thank you.

Q. How long have you been in there? A. Forty some days.

Q. Do you know the defendant, George Moore? A. Yes, sir.

Q. How long do you know him? A. I have known him about ten years.

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Q. Were you known as his brother? A. Yes, sir.

Q. Are you actually his brother? A. No, sir.

Q. Do you know the defendant, Lester Haughton? A. No, sir, I don't.

Q. Do you know a man named Adolph Clark? A. Yes, sir.

Q. Do you remember Friday, the 13th of December of last year? A. Yes, sir.

Q. Did Adolph Clark come to your house at that time? A. Yes, sir.

Q. On that date? A. Yes, sir.

Q. Do you know what time of day it was? A. No, sir, I really don't. Around about seven. 740

Q. Some time in the evening? A. Yes, sir.

Q. Did he have a conversation there with you? A. No, sir. He just came and told me——

Mr. Wilkinson: I object to that, what he told him not in the presence of the defendant.

The Court: Sustained.

Q. Don't say what he said. Did he talk to you there? A. No, sir.

Q. He said something to you? A. Yes, he asked me.

Q. Then did you leave your home with Clark? 741
A. Yes, sir.

Q. Where did you go? A. To the drug store and then to Moore's house.

Q. To the drug store and then to Moore's house? A. Yes, sir.

Q. What did you do in the drug store? A. He got some bandage and some iodine and some other stuff. I don't know the name of it.

Q. When you say "he got" that, do you mean Clark? A. Yes, sir.

Q. And did you then with Clark go to Moore's house? A. Yes, sir.

Q. His room. Did you have a conversation there with Moore? A. Yes, sir.

Q. What did you say to him and what did he say to you? What did you talk back and forth? A. I asked him what happened. He told me he got shot in a stick-up, so I asked him who shot. He said: "Me, because I wouldn't go with nobody unless I had the gun."

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Mr. Wilkinson: I can't understand that answer.

The Court: Read it.

(The Court Reporter reads the last answer.)

Q. When you say you asked Moore who shot, do you mean who shot him or who did the shooting in the place? A. I asked him who did the shooting in the place.

Q. What did he say? A. He told me he did.

Q. Moore told you that he had done it? A. Yes, sir.

Q. Did you have further conversation with
744 him? A. Well, he complained about his arm is hurt.

Q. Did you look at his arm? A. Well, he was laying on the bed. I could see he had it bandaged.

Q. What else did you notice there? A. He was telling me: "My rent is due;" asked me could I help him with money. I told him sure, if I could. He said he didn't have any money, so me and Clark left there and I left him a dollar on a little table

he had by his bed. So we went on. So I came over the house.

Q. When was the next time you saw Moore after that evening? A. About four or five days after that.

Q. Where did you see him? A. He came by the house.

Q. To your house? A. Yes, sir.

Q. What took place there? A. He was talking; just I don't remember what all he said. He was talking, it was bad luck. He said: "Always bad luck on the 13th."

Q. Did he do anything about his wound in your 746
home on that day? A. Yes, sir. Him and Clark came in with some epsom salt and some more bandage and iodine and he asked me could he bathe his arm in a little basin I had there. I told him: "Yes, go ahead." He bathed his arm there.

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Q. How old are you, Brown? A. Twenty-five.

Q. Will you keep your voice up? A. Twenty-five.

Q. Are you married? Pardon me? A. Com- 747
mon law marriage.

Q. But you have a wife? A. No, sir.

Q. Do you live with a woman? A. Yes, sir.

Q. What is the woman's name you live with? A. Louella Brown.

Q. What is that? A. Louella Brown.

Q. Was she arrested in this case too? A. Yes, sir.

Q. Was she? A. Yes, sir.

Mr. Foley: I object, if your Honor pleases, "arrested too."

The Court: Objection sustained.

Q. Well, was Louella Brown——

The Court: The Jury is instructed to disregard the question and answer.

Q. Was Louella Brown detained by the police in connection with this case? A. No, sir.

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The Court: Do you understand what he means by that, by the words "detained by the police"?

The Witness: They came to the house and got her.

Q. Was she in jail as a result of this case? A. I think she stayed one night.

Q. And you say you are a friend of George Moore's? A. Yes, sir.

Q. And does Louella know George Moore too? A. Yes, sir.

Q. Is she a friend of George Moore's too? A. Yes, sir.

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Q. Is she going to be a witness in this case?

Mr. Foley: Well, I object, if your Honor pleases. That calls for a conclusion that could hardly be within his knowledge.

The Court: Sustained.

Q. If you know. A. I guess so. I don't know.

Q. Where are you at the present time, in the County Jail? A. Yes, sir, in the County Jail, Bronx.

Q. Have you ever been convicted of a crime? A. Yes, sir.

Q. How many times? A. About five.

Q. What were those convictions for? A. Jostling and one petit larceny.

Q. Is that four jostlings and one petit larceny? A. Yes, sir.

Q. Did you serve time on them? A. Yes, sir.

Q. How much time did you serve? A. Six months, thirty days twice and sixty days twice. 752

Q. When was the last time you were convicted? A. About forty-one or forty-two, something like that.

Q. How much time did you serve on that? A. Sixty days.

Q. Where have you been working since forty-two? A. Laundry.

Q. Where? A. 108th Street and a laundry at—I left from the laundry from 108th Street to 50th Street and Ninth Avenue, the Premier Laundry, after I started working there. I worked in a restaurant, the Bonat, 34th and Seventh Avenue, right by the post office.

Q. When were you put in jail as a material witness in this case? A. About the 7th, I think, or the 8th last month. 753

Q. Of February? A. Yes, sir.

Q. Where were you working in December of forty-six? A. December? 46th Street and Lexington Avenue.

Q. What is the name of the place? A. Glorified Ham and Egg.

Q. How long had you worked there? A. Well, at that particular place I had been working there about two weeks, but I worked at the other place, 51st Street and Broadway.

Q. You were working at the Glorified on what dates? A. I don't remember the dates when I worked there.

Q. You don't remember the dates? A. No.

Q. You remember Friday, December 13th, don't you? A. Yes, sir.

Q. You remember that date pretty well, do you not? A. Yes, sir.

755 Q. Where did you work Friday, December 13th? A. I wasn't working then.

Q. Were you off on vacation? A. No, sir. I wasn't working. I didn't have no job.

Q. Where did you work that week before Friday, December 13th? A. I wasn't working then.

Q. So the second week in December you weren't working? A. Yes, sir.

Q. Is that right? A. That's right.

Q. And the first week in December you weren't working? A. That's right.

Q. Now, the last week in November, where were you working? A. Working in the ham and egg place.

Q. For two weeks? A. I worked there about 756 two weeks and something.

Q. The last two weeks in November? A. It was in November. I don't know the last; not exactly the last.

Q. Well, you weren't working in December at all, were you? A. I started to work about a day or so after Christmas, I think.

Q. But up until that time in December you hadn't worked at all, is that right? A. That's right, sir.

Q. What do you live in, in an apartment? A. Yes, sir.

Q. How many rooms? A. Five.

Q. With whom do you live in addition to Louella? A. My two kids and a little girl and boy.

Q. Another girl and boy? A. Room there.

Q. They room? A. Yes, sir.

Q. Is Louella employed? A. Yes, sir.

Q. Where is she employed? A. Doing housework.

Q. In November you worked for Glorified, is that correct? A. Yes. 758

Q. Did you work any other place in November? A. No, sir.

Q. And you worked about two weeks with the Glorified? A. That is what it was.

Q. And before the Glorified where did you work? A. I worked in a laundry.

Q. What laundry was that? A. The Premier Laundry.

Q. How long did you work there? A. I worked there about six or seven months.

Q. Wer you known as Moore's brother? A. Yes, sir, some place.

Q. Did you claim to be his brother? A. Yes, sir.

Q. Have you anything against Moore today? 759
A. No, sir.

Q. Have you been talking about this case over in the County Jail with Clark and the others? A. Yes, sir.

Q. How well do you know Clark? A. Oh I know him through by Moore. I don't know him so well.

Q. Through Moore? A. Yes, sir.

Q. Did you know that Clark testified against Moore? A. Yes, sir.

Q. Have you been talking to Clark about the case? A. Sure.

Q. Did he tell you what he testified here to? A. Yes, sir.

Q. Have you known Clark as a stick-up man? A. No, sir.

Q. Do you know of any jobs he has been on? A. No, sir.

Q. Have you been on any stick-ups? A. No, sir.

761 Q. Have you got a gun? A. No, sir.

Q. Did you have a gun? A. No, sir.

Q. Did you ever see the gun that Banks had? A. No, sir.

Q. Do you know Banks? A. No, sir, I don't.

Q. Never spoke with Banks? A. Sure, since we were locked up together.

Q. Do you know whether Banks had a gun? A. He said he did.

Q. Were you home on the night in January when detectives came to your house and questioned you and your wife? A. No detective came to my house in January no night.

Q. Well, did Louella tell you that she reported Moore to the detectives? A. Sure.

762 Q. Did she tell you that? A. Yes, sir.

Q. And did Louella tell you that she made an appointment with the detectives? A. No, sir, she didn't.

Q. Did Louella tell you that she pointed out Moore to the detectives? A. Yes, sir.

Mr. Wilkinson: No further questions.

Mr. Fleischman: No questions in behalf of the defendant Lester Haughton.

Redirect examination by Mr. Foley.

Q. Brown, you say that your common-law wife Louella reported Moore to the police? A. Yes, sir, from the jury.

Q. What is that; did you say jury? A. Yes, sir.

Q. Was that in connection with this case? A. No, sir.

Q. Something else? A. Yes, sir.

Mr. Foley: Thank you.

Recross-examination by Mr. Wilkinson. 764

Q. But you knew that she wanted to get Moore out of the way, didn't you? A. No, sir.

Q. And you had discussed it with Louella? A. No, sir.

Q. And didn't Louella tell you that if Moore is on the outside she is going to get in trouble? A. No, sir, she did not.

Q. And didn't Louella tell you that she will get Moore out of the way? A. No, sir.

Q. But Louella has discussed Moore with you, hasn't she? A. No, sir.

Q. She has never talked about Moore to you? A. No, sir.

765

Q. And didn't you tell Louella what you would testify to in this court with reference to Moore? A. No, sir, I didn't tell her anything.

Q. But you knew that Louella had fingered Moore to the detectives on some other matter to get him out of the way, didn't you?

Mr. Foley: I object, if your Honor pleases.

The Court: Sustained. I will permit the question in the proper form.

Q. You knew that Louella had pointed out Moore to the detectives with reference to some other matter, did you not? A. Yes, sir.

Q. And you knew that Louella wanted to get Moore out of the way, did you not? A. No, sir.

Q. Did you tell anybody what you were going to testify in court today? A. I told them I will tell the truth.

Q. You told them you will tell the truth? A. Yes, sir.

Q. Do you always tell the truth when you take the stand? A. This is my first time on the stand being a witness.

767 Q. Pardon me? A. This is my first time on the stand being a witness.

Q. These convictions that you had, did you always plead guilty? A. Yes, sir.

Q. Were you ever picked up for questioning in any other matter? A. No, sir.

Q. Did the detectives question you about some jewelry? A. No, sir. He just asked me how it got in my apartment.

Mr. Wilkinson: No further questions.

Mr. Foley: No questions.

Mr. Fleischman: No further questions.

The Court: That is all. You may step

768 down.

(Witness excused.)

Mr. Foley: I am sorry about the delay, Judge, but these are all material witnesses and I have to send around for them.

The Court: I understand that.

HAROLD ODELL DUPREE, a witness in behalf of The People, having been first duly sworn, stated that he resided at 624 Lenox Avenue, Manhattan, and testified as follows:

Direct examination by Mr. Foley.

Q. Dupree, are you at present confined in The Bronx County Jail as a material witness? A. Yes, sir.

Q. How long have you been in there? A. Forty-four days.

Q. Do you know the defendant Moore? A. Yes, sir. 770

Q. By what name do you know him? A. Stack of Dollars.

Q. Do you know the defendant Haughton? A. Yes, sir.

Q. By what name do you know him? A. Raymond.

Q. And do you know a man named Adolph Clark? A. Yes, sir.

Q. How long have you known Moore or Stack? A. Since——

The Court: About how many years?

The Witness: About five years.

771

Q. How long do you know Haughton? A. Since last September.

Q. That is September of 1946? A. Yes, sir.

Q. How long do you know Adolph Clark? A. The same.

Q. Now I want to direct your attention to some day in the week following the 13th of December of last year. In the week following Friday, the 13th, did you meet Adolph Clark? A. Yes, sir.

Q. Do you know on what day of that week it was? A. It was Monday or Tuesday.

Q. Where did you meet him? A. Corner of 135th Street and Eighth Avenue.

Q. And did you have a conversation with him there? A. Yes, sir.

Q. After that conversation did Clark leave you, Adolph, and return in a little while? A. Yes, sir.

Q. Did he have anything with him when he returned? A. Yes, sir.

Q. What was it? A. A bundle.

Q. Did you go anywhere with Clark? A. Yes, sir.

773 Q. Where to? A. To the basement of 142nd Street and Eighth Avenue.

Q. To the basement? A. Yes, sir.

Q. What did you do there? A. We burned some clothes.

Q. Did you open the package before you burned them? A. Yes, sir.

Q. And did you look at any of the things that were in it? A. Yes, sir.

Q. Do you know what was in it? A. Three pieces of clothes.

Q. What were they? A. An overcoat, a suit topcoat, a suit coat and a shirt.

Q. What kind of an overcoat was it? A. It
774 was a camel's hair overcoat.

Q. And what did you find with respect to the camel's hair overcoat? A. Two holes in the sleeve.

Q. Where were they? A. One was over here.

Q. Indicating the upper arm. A. And one was in the lower part.

Q. What did you do with those clothes, you and Clark? A. We put them in the furnace and burned them up.

Q. Several days after you did that, did you meet Clark and Moore? A. Yes, sir.

Q. When I say Moore, I mean Stack, the defendant here. A. Yes, sir.

Q. Where did you meet them? A. At the bar, Gilbert's Bar, 142nd Street and Eighth Avenue.

Q. How long was that after you and Clark had burned the clothes? A. Three to four days after.

Q. Did you have a conversation with Moore on that occasion? A. Yes, sir.

Q. Tell me what you said to Moore and what he said to you, back and forth.

776 Mr. Fleischman: Your Honor please, I am objecting to any conversation between Moore and this witness as not binding on the defendant Lester Haughton.

The Court: I instruct the Jury this evidence is received as against the defendant Moore only and not as to the defendant Haughton. Proceed.

Q. Go ahead, Dupree. Tell me what you and Moore said that day at the bar. A. Well, when Moore came to the bar he told me that he had been shot. He said he was shot in his arm, so we went—he told me he was shot in a hold-up in The Bronx. We sat down, talking. I gave him 777 some money.

Q. Did you tell him that you had burned his clothes? A. Yes, I did.

Q. Did he tell you anything about what happened in the hold-up? A. Yes. He told me he shot a policeman.

Q. Did he say it was there that he got shot? A. Yes, that is what he said.

Mr. Foley: Your witness.

Cross-examination by Mr. Ehrman.

Q. Mr. Dupree, how old are you? A. Twenty-five.

Q. Are you married? A. Yes, sir.

Q. Any records of convictions? A. Yes, sir.

Q. How many times have you been convicted of crime? A. I beg your pardon? I took a plea to what matters I had. Is that a conviction?

The Court: A plea for your information is a conviction.

779 Q. How many times were you convicted of crime? A. Twice.

Q. Well now, in the year 1937 were you convicted of any crime? A. Yes, I was.

Q. What was that? A. That was robbery.

Q. And were you sent to jail? A. I was sent to State, New York State Training School.

Q. Was that on a plea of guilty or on a conviction? A. That was on a plea.

Q. How long after you came out of the training school were you convicted again? A. Nine months after I came out.

Q. And that was a conviction in the Magistrates' Court? A. Was that July 31st, 1939?

780 Q. July 3rd. A. July 3rd?

Q. 1939. A. Well, that was when I was—that is when I was—I put a slug in a turnstile in the subway. I was picked up for that.

Q. But you were convicted of that? A. I was, suspended sentence.

Q. I say, you were found guilty of the crime? A. Yes, sir, of course.

Q. And you received a suspended sentence? A. Yes, sir.

Q. When was your next conviction? A. In July.

Q. Of what year? A. Thirty-nine.

Q. The same month, was it not? A. It was the end of the month.

Q. What? A. The 31st.

Q. What was that conviction for? A. Robbery.

Q. And what happened to that charge; I mean what happened to that; were you sent to jail? A. Yes, I was.

Q. Did you plead guilty to that also or were you convicted by a jury? A. I plead guilty.

Q. And when was your next conviction? A. 782
December the 26th of this year, of last year.

Q. Last year. Now, during the times that you were out of jail were you working for anyone? A. I beg your pardon?

Q. During the intervals that you were out of jail, were you working for anyone? A. Yes, sir.

Q. Who was your last employer? A. Mrs. Ruth Cypress of 552 Lenox Avenue; Lennis Scolaro, a pawn shop.

Q. What did you do in the pawn shop? A. I was a clerk.

Q. And how long have you been working there? A. I left the job last January.

Q. January of 1947? A. Yes. January of 783
forty-six.

Q. Forty-six? A. Yes, sir.

Q. And you haven't been working since then? A. Intermittently off and on.

Q. What kind of work have you done intermittently? A. I am an upholsterer by trade and I can do that, because I have my own tools and when I need some money I repair a chair or hang drapes.

Q. Are you married? A. Yes, sir.

Q. Have you a family, wife and children? A. No, I haven't any children.

Q. Does your wife work? A. Yes, she works, but we are separated now.

Q. So you don't need any money; is that it?

Mr. Foley: I object to that, if your Honor pleases.

The Court: Objection sustained. The Jury is instructed to disregard it.

785 Q. Now, you stated that you have known Moore for about five years. Have you been on friendly terms with him during those five years? A. Yes, sir.

Q. Have you visited him at his home? A. Yes, sir.

Q. And he visited you at your home? A. Yes, sir.

Q. And there is no bad feeling between you and Moore, is there? A. None.

Q. Never was? A. No, sir.

Q. Now, you met him and Clark in December of 1946, Adolph Clark, in December? A. Yes, sir.

786 Q. On a Monday or Tuesday of the week following the commission of that crime, is that right? A. Yes, sir.

Q. And then Clark left you and came back with a bundle, is that right? A. Yes, sir.

Q. Was the bundle tied up with strings? A. No. It was just wrapped in paper.

Q. It wasn't tied up. A. No. He was holding it. It wasn't tied anyway.

Q. And you didn't ask Clark what was in the bundle, did you? A. He told me.

Q. He did? A. Sure.

Q. What did he tell you? A. He told me these were the clothes that he wanted to get rid of.

Q. Did he tell you whose clothes they were? A. Yes, sir.

Q. So what was the purpose of your opening the package to find out what was in it if Clark had already told you what was in it? A. Because when he told me that Stack had been shot, Moore had been shot——

788 Mr. Berman: I move to strike it out.

Mr. Foley: Just a moment.

Mr. Ehrman: The answer is not responsive.

Mr. Foley: It is directly responsive and I would like to have the witness permitted to make his complete answer.

The Court: Repeat the question.

(The Court Reporter reads the question as follows: "Q. So what was the purpose of your opening the package to find out what was in it if Clark had already told you what was in it?")

The Court: Overruled.

789 The Witness: When he told me that Stack had been shot——

Mr. Ehrman: Just a minute. What is your Honor's ruling?

The Court: You asked the purpose and the reason and the witness is answering.

Mr. Ehrman: I withdraw the question.

Mr. Foley: I object, if your Honor pleases.

The Court: I will permit him to withdraw it.

Mr. Foley: If your Honor pleases, the witness had commenced to make a responsive answer and I would like to have it completed and then have your Honor pass upon its admissibility.

The Court: No. I will permit him to withdraw his question.

By Mr. Ehrman.

Q. Clark told you what was in the package, is
791 that right? A. Yes, sir.

Q. So you knew what was in the package?

The Court: Answer that question. Did you know what was in the package?

The Witness: When I opened it and found out what was in it, I knew then.

Q. That is not the question, Mr. Dupree. The question is that after Clark told you what was in the bundle, you knew?

Mr. Foley: If your Honor pleases, I object. The witness has stated he knew when he opened the package.

792 The Court: He may inquire. Overruled.

Q. After Clark told you what was in the package, you knew already what was there, didn't you?

Mr. Foley: I object to that.

The Court: That is ambiguous. Sustained.

Mr. Ehrman: I thought your Honor allowed the question.

The Court: It is ambiguous.

Q. Did you find out what clothing was in the bundle when Clark came with it? A. Yes, I did.

Q. All right, so there was no further occasion for you to find out by opening the bundle, was there? A. Yes, sir.

Q. To find out what was there? A. Yes, sir.

Q. Now, Clark took the bundle, opened it up and exhibited it to you, is that it? A. Together we did it. 794

Q. What? A. Together we did it?

Q. Together? A. We opened it up together.

Q. And then you threw it into the furnace? A. After we examined it.

Q. Was there any special reason why you examined the coat? A. Because he said that Stack had been shot in his arm and there were bullet holes in the coat and I looked to see if it was true.

Q. You didn't believe Clark? A. I didn't believe what he said then until I saw the holes in the coat.

Q. You knew that you were burning up clothes and you didn't believe him? A. We didn't burn them until I looked at the clothes. 795

Q. In other words, Clark and you came to burn up a bundle, but you didn't; Clark didn't allow you to burn it up or to throw it into the furnace until you examined it?

Mr. Foley: I object, your Honor.

The Court: Objection sustained.

Q. Now, there were two holes in that bundle, in that coat? A. Yes, sir.

Q. And are you an expert on firearms? A. No, sir.

Q. How big were those holes? A. I can't recall exact size of them.

Q. You can't. Were they the size of a half dollar? A. No, sir.

Q. Of a silver dollar? A. They were smaller than that.

Q. Of a nickel? A. Ranging from the size of a dime, something like that, or smaller.

797 Q. And the minute you looked at these holes you knew what caused them to be made, is that it? A. No, sir.

Q. How many times have you been interviewed by police officers and men from the District Attorney's office? A. Two or three times; maybe more than that, but I can't recall exactly all the times.

Q. How many times—how long have you been in jail under detention? A. How long have I been?

Q. Yes. You are still there now? A. Three months, three months and one day.

Q. Three months? A. Three months today, the 26th.

798 Q. During those three months you were only interviewed two or three times? A. Yes, sir.

Q. That is all, Mr. Dupree.

Mr. McDonough: No questions on behalf of Lester Haughton.

Redirect examination by Mr. Foley.

Q. Dupree, when you say you have been in jail three months, in what jail were you back three months ago? A. I was at the Tombs.

Q. And how long have you been in jail in The Bronx? A. Since the 7th of February, 8th of February.

Q. How old are you, please? A. Twenty-five.

Q. When is your birthday? A. December the 7th.

Q. You were twenty-five years old on December 7th? A. Yes, sir. 800

Q. All right: thank you.

The Court: That is all.

(Witness excused.)

OTIS BANKS, a witness in behalf of The People, having been first duly sworn, stated that he resided at 128 West 134th Street, Manhattan, and testified as follows:

Direct examination by Mr. Foley.

Q. Banks, are you at present confined in The Bronx County Jail? A. Yes, sir. 801

Q. As a material witness? A. Yes.

Q. How long have you been in there? A. Since February the 8th.

Q. By what name are you known, what nickname? A. Otis Banks.

Q. That is your name? A. Are you known by any other name? A. No, sir.

Q. Are you referred to as Mack? A. No, sir.

Q. Do you know the defendant, George Moore? A. Yes, sir.

Q. How long do you know him? A. About nine months.

Q. Did you see Moore on the 13th of December, 1946? A. Yes, sir.

Q. About what time of day? A. I saw him in the afternoon about quarter to three, I would say.

Q. Did you at that time—were you at the time the owner of a gun? A. Yes, sir.

803 Q. Was it an automatic? A. Yes, sir.

Q. Forty-five? A. Yes, sir.

Q. I show you People's Exhibit 12 in evidence and ask you whether that is the gun—you may take it—that you owned at that time. A. Yes, sir.

Q. Did you have a conversation with Moore on the afternoon of the 13th; did you have a talk with him? A. No, sir.

Q. Did you give that gun to Moore on the 13th? A. Yes, sir.

Mr. Wilkinson: I object to it as leading.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

804

Q. What was your answer? A. Yes, sir.

Q. At what time? A. At a quarter to three.

Q. In the afternoon? A. Yes, sir.

Q. And when was the next time you saw that gun? A. Sunday, that Sunday.

Q. Well, the 13th was Friday; you saw it on Sunday? A. Yes, sir.

Q. Did you see Moore between the time you gave him the gun and the time you next saw it? A. Yes, sir.

Q. Where did you see him? A. At his room.

Q. And when? A. That was Sunday.

Q. Sunday? A. Saturday; I saw him Saturday afternoon, that Saturday afternoon.

Q. Did you have a conversation with him? A. Yes, sir.

Q. Was it about the gun? A. Yes.

Q. Tell me what you said to Moore in his room on Saturday and what he said to you. A. Well, I went in his room and he was lying in bed. He 806
was in bed and he said: "I guess you heard about me." He told me about his arm. I said: "Yes." So I said: "Have you been to a doctor or anything?" He said: "No." So I told him he might catch cold in his arm; he might get blood poisoning that way. He wanted to know was I kidding. Then I asked him about the gun. He said he threw it away. He said: "What do I want with a hot gun?" So I told him that it didn't belong to me. I was going to send it out of the State. I was going to send it to Philadelphia, and for a few minutes nobody said nothing. Then he said: "All right, I know where it is at." I said: "You can get it for me?" He said he won't be able to get it today; he will get it tomorrow. 807
Then he asked me if I had a jacket, overcoat or jacket, something I could spare. I told him yes and then I left the room.

Q. Did you see Moore again the next day, Sunday? A. Yes, sir.

Q. Did you have a conversation about the gun on Sunday? A. Yes.

Q. What was it? A. When I went up there to carry the jacket to him——

Q. I didn't understand that. A. I went up there to carry the coat to him, the jacket.

Q. You were giving him a jacket? A. Yes, sir.

Q. And you carried it up there? A. Yes, sir.

Q. Go ahead. A. I carried the jacket up there and we were talking for a few minutes. I don't know just what we were talking about, but it led around to the gun and he told me when I go down the street did I see Adolph, that is Clark, and tell him he said to give me the thing.

809 Q. And did you go down to see Clark? A. Yes, sir.

Q. And did you get the gun from Clark? A. Yes, sir.

Q. Now, what did you do with it, Banks, after you got it back from Clark? A. I carried it home and put it where I keep it.

Q. Where do you keep it? A. Under the chair cushion.

Q. Under a chair cushion? A. Yes, sir.

Q. And how long did it stay there? A. Until January about the 3rd or 4th.

Q. What did you do with it then? A. I pawned it to Askew, Frank Askew.

Q. How much did you get for it? A. $30.

810 Q. You borrowed $30 from Frank Askew? A. Askew.

Q. And did you put the gun up with him as security? A. Yes, sir.

Q. Were you visited at your home on the night of February 7th or the early morning of February 8th of this year by police officers? A. Yes, sir.

Q. Do you know who they were? A. Not by name, but if I see them.

Q. Where did you go with them? A. From there I came up here.

Q. To the District Attorney's office? A. Yes, sir.

Q. Did you see Moore here? A. Yes, sir.

Q. Did you have a talk with him? A. No, sir. I had a couple of words with him when I walked in. He said: "They know everything, so give them the gun."

Q. Moore said: "They know everything, so give them the gun?"

Mr. Wilkinson: I object to it being repeated. The question has been already answered. I object to the statement. 812

Mr. Foley: He answered the question and I repeated his answer, asking was that what he said.

Mr. Wilkinson: The question had already been answered and I object to the statement made by the District Attorney.

The Court: The Jury is instructed to disregard it. The Stenographer repeat the answer.

(The Court Reporter reads answer as follows: "A. No, sir. I had a couple of words with him when I walked in. He said: "They know everything, so give them the gun.") 813

Q. After Moore said that, did you leave the District Attorney's office with police officers? A. Yes, sir.

Q. Where did you go? A. Down to Frank Askew's house. That is 2204 Seventh Avenue.

Q. And at Frank Askew's house did you find the gun, People's Exhibit 12? A. Yes, sir.

Q. And that is the same gun that you pawned to Askew for $30? A. Yes, sir.

Q. And it is the same gun that you loaned to George Moore on the afternoon of the 13th— A. Yes, sir.

Q. —of December? A. Yes, sir.

Mr. Feley: Your witness. May I have another question, please?

Q. At the time you loaned this gun to Moore, was it loaded? A. Yes, sir.

Q. When you got it back, was it loaded? A.
815 No, sir.

Q. Was it empty? A. Yes, sir.

Cross-examination by Mr. Wilkinson.

Q. How old are you, Banks? A. Thirty-one.

The Court: How old are you what?

Mr. Wilkinson: Mr. Banks.

The Witness: Thirty-one.

The Court: I don't mean that. I didn't hear what you said.

Q. Are you married? A. Yes, sir.

Q. How long have you been married? A. It
816 will be three years this August.

Q. Is this your first marriage? A. Yes, sir.

Q. Have you ever been convicted of a crime? A. No, sir.

Q. How long have you had this gun? A. Well, I got it in May, 1946, the 24th of May.

Q. Where did you get it from? A. A friend; not a friend; a fellow I know by the name of Jimmie.

Q. When did you first meet Clark? A. I met Clark since I have been here. I knew him from seeing him, but I never had any connection with him.

Q. What do you mean, you never had any connection with him? A. I didn't know his name. I had seen him around, but never said anything to him.

Q. He was familiar to you, wasn't he? A. No.

Q. You had seen him? A. I had seen him.

Q. Had you talked with him? A. No.

Q. Where had you seen him? A. Around with Stack. 818

Q. Is that the only time you saw him? A. Sure.

Q. With Stack? A. That's right.

Q. Was he ever to your house? A. Once.

Q. When was that? A. He came to my house for the jacket and I told him to tell Stack that I will bring the jacket myself.

Q. Is that the only time Clark was over to your house? A. That's right.

Q. What do you have, an apartment or a room? A. Apartment.

Q. How many rooms? A. Five.

Q. How many people live in that apartment? A. I, my wife and child.

Q. Anyone else? A. No.

Q. Where were you working in December? A. 819 Plastic Wear, 238 William Street.

Q. How long had you been working there? A. Twenty-two months.

Q. Plastic Wear is it? A. Plastic Wear, injector moulding.

Q. From whom did you get this gun in May? A. From a fellow known only as Jimmie to me.

Q. A stranger? A. To me he is. I don't know him.

Q. Did you buy it from him? A. He pawned it to me for $7.

Q. He never came back for it? A. Never. In fact, I only saw him once since then.

Q. Did you get it with ammunition? A. Yes.

Q. What kind of ammunition did you have for it? A. Forty-five.

Q. Do you know what kind of a gun it is? A. Army forty-five.

Q. Did you ever have it registered anywhere? A. No.

821 Q. Did you know it was a crime to have the gun? A. Yes.

Q. You knew it was a crime to have the gun? A. Without permit, yes.

Q. Did you have a permit? A. No.

Q. Did you ever apply for a permit? A. No.

Q. Was the gun in working condition? A. As far as I know.

Q. Well, did you use it at all? A. No.

Q. Did it have any bullets in it? A. When I got it?

Q. When you had it. A. Sure.

Q. How many bullets did it have? A. Six.

Q. They were forty-five shells? A. Yes, sir.

822 Q. Did you use any of them at any time? A. No, sir.

Q. Did you get any more at any time? A. No, sir.

Q. How do you know it had six in there? A. I saw them. I counted them.

Q. Did you take them out of the clip? A. Yes.

Q. You took out the clip from the gun? A. Yes, sir.

Q. And you took each bullet out? A. Yes, sir.

Q. Counted them? A. Yes, sir.

Q. Is that before you loaned the fellow $7 or after? A. It was after.

Q. After you had possession of the gun?. A. That's right.

Q. You put the cartridges back in the clip and then put it back in the gun? A. That's right.

Q. Did you take it out and try it at any time? A. No, sir.

Q. Did you ever carry the gun? A. No, sir.

Q. Did you ever apply for a permit for it? A. No, sir. 824

Q. Did you tell your wife you had a forty-five in the house? A. Yes, sir.

Q. She knew about it? A. Yes, sir.

Q. You say on December 13th—withdrawn. Were you known in the neighborhood as Mack? A. No, sir.

Q. Did anybody ever call you Mack? A. Not that I know of.

Q. As far as you know, no one ever called you Mack? A. That's right.

Q. On December 13th you say you loaned that gun to someone? A. That's right.

Q. At three o'clock in the afternoon? A. Yes, sir.

Q. That was on Friday? A. Friday, yes. 825

Q. Were you working that day? A. Yes, sir.

Q. What hours do you work? A. Four to twelve, four in the afternoon to twelve midnight.

Q. And where had you been keeping the gun? A. At my house under the cushion of the chair.

Q. Under the chair? A. Under the cushion of the chair.

Q. Did you ever loan that gun to anyone other than Stack? A. No, sir.

Q. You have been talking to Clark in jail, haven't you? A. Yes, sir.

Q. Is he on the same tier with you over there? A. Yes, sir.

Q. You are all able to talk together? A. Yes, sir.

Q. Have you been talking about this case at all? A. Off and on someone would come up with a question.

Q. As each one comes back do they tell what
827 happened to them or what they said? A. Yes, sir.

Q. Did Clark tell you that "in case you are asked whether I had that gun, deny that I ever had the gun"? A. No, sir.

Q. Did Clark talk to you about his having the gun at any time? A. No, sir.

Q. What did Moore say on December 13th when you claim he came to your house and asked for the gun?

Mr. Foley: Just a moment. If your Honor pleases, there is no testimony that Moore came to his house.

The Court: Sustained. The testimony so
828 far is not that he came to his house.

Q. Did you say your saw Moore on December 13th? A. That's right.

Q. Where? A. At the beer garden, 135th Street and Eighth Avenue.

Q. Was he at your house that day? A. No.

Q. Did you give him the gun on that day? A. Yes, sir.

Q. Where? A. At 135th Street and Eighth Avenue.

Q. At what time? A. About quarter to three.

Q. In the beer garden? A. In the beer garden.

Q. Who else was present when you gave him the gun? A. No one but him.

Q. Was that the first time you saw him that day, three o'clock? A. That's right.

Q. And you had the gun on you? A. No, it wasn't the first time I saw him. I saw him; then I went and got it.

Q. How far is this beer garden from your house? A. Five minute walk. 830

Q. You turned it over to him in the beer garden, is that correct? A. That's right.

Q. Just the two of you present? A. That's right.

Q. You had seen Clark prior to the 13th of December, had you not? A. That is before the 13th?

Q. Yes. A. I had.

Q. Did you see Clark on the 13th of December? A. No, I didn't.

Q. At no time on the 13th of December did you see him? A. No.

Q. Now, on December 13th you met Moore in the beer garden, is that correct? A. That's right.

Q. Were you in there, drinking or something? 831
A. No. I was sitting at the lunch counter, reading a newspaper.

Q. And was he in there having lunch too? A. No.

Q. Was he in there? A. He came in.

Q. He came in and did he ask you for the gun? A. Yes.

Q. Is there any doubt? A. No.

Q. He asked you for the gun? A. That's right.

Q. What did you say? A. I said: "I will have to go to the house to get it. I don't have it with me."

Q. Did he leave any collateral for it or anything? A. No.

Q. Did he give you any money for it? A. No.

Q. He just asked you for it and you gave it to him? A. That's right.

Mr. Wilkinson: No further questions.

Mr. McDonough: No questions on behalf of the defendant Haughton.

833

Redirect examination by Mr. Foley.

Q. When you were asked for this gun on the 13th of December what did he say to you and what did you say to him? What was the conversation about that gun? Why did you give it to him? A. I give it to him to clean. He was going to clean it for me.

Q. Was that the first time that you and Moore had discussed the cleaning of that gun? A. No.

Mr. Foley: That is all.

The Court: Step down.

(Witness excused.)

834

Mr. McDonough: Your Honor pleases, may I ask for a recess of about ten minutes? I would like to speak to Mr. Foley and yourself at the bench.

The Court: You want to speak to Mr. Foley and me?

Mr. McDonough: At the bench if I may now.

The Court: Yes, sure. (Messrs. Foley, McDonough, Ehrman, Wilkinson and Fleischman confer with the Court at the bench.)

The Court: I have been requested by the attorneys to give them a recess. I will do so. Come down, please, in ten minutes.

(After a short recess.)

FRANK ASKEW, a witness in behalf of The People, having been first duly sworn, stated that he resided at 2204 Seventh Avenue, Manhattan, and testified as follows: 836

Direct examination by Mr. Foley.

Q. Askew, do you know a man named Otis Banks? A. I do.

Q. How long do you know him? A. Oh, about three years now.

Q. I want to show you People's Exhibit in evidence 12 and ask you whether you have seen this before. A. That was at my house.

Q. When did you first see it? A. About January the 4th.

Q. Who brought it to your house? A. Otis Banks. 837

Q. Did he leave it with you? A. He did.

Q. How did he come to leave it with you? A. Well, he told me he needed some money.

Q. Don't say what he told you. Did you loan him some money? A. I loaned him some money.

Q. How much? A. $30.

Q. And did he leave the gun for security? A. He did.

838 *Frank Askew—For People—Direct—Cross.*

Q. Did you keep it in your house from that day on? A. I did.

Q. Do you remember the morning, the early morning of February 8th, 1947? A. I do.

Q. Did Otis Banks come to your house that morning? A. He did.

Q. Was he accompanied by police officers? A. He was.

Q. And did you give them there that gun, People's Exhibit 12? A. I did.

Mr. Foley: Your witness.

839 *Cross-examination by Mr. Wilkinson.*

Q. How much did you give Banks for the gun? A. I loaned him $30 on the gun.

Q. What do you do for a living? A. Work.

Q. Pardon me? A. Work.

Q. You work? A. I do.

Q. Where do you work? A. Bellevue Hospital.

Q. How long have you worked there? A. Well, I work at Bellevue a little better than a month.

Q. Where did you work before Bellevue? A. Plastic Wear.

Q. Where? A. Plastic Wear.

Q. Did you work with Banks? A. Yes, I worked
840 with Banks.

Q. You knew him from the Plastic Wear Company? A. I knew him from the Army.

Q. And then you subsequently worked with him in Plastic Wear? A. Well, not exactly on the same shift, but in the same place.

Q. How long did you work for Plastic Wear? A. Six months.

Q. And then did you go right to Bellevue Hospital from Plastic Wear? A. No, I didn't.

Q. Have you ever been convicted of a crime? A. Never.

Q. Pardon me? A. No, sir.

Q. With whom do you live? A. I live with my common-law wife.

Q. How old are you? A. I am about thirty-seven years old.

Mr. Wilkinson: May I see that People's Exhibit, please?

Q. Did you know what kind of a gun this was that Banks brought to your house? A. Yes, a forty-five, automatic forty-five. 842

Q. Did you look it over at all? A. Well, I just, no more than I just noticed the scratch on the side of it.

Q. The what? A. The scratch on one side of it.

Q. That's all you noticed about it? A. That's all I noticed about it.

Q. Do you know what scratches were on it? A. Just one long scratch down the side. That's all I can remember about it.

Q. Did you take it apart at all? A. No.

Q. Did you look at the clip inside? A. No.

Q. Did you take the clip out? A. I taken that out, yes.

Q. You took that out? A. Yes. 843

Q. What was in it? A. Nothing.

Q. Nothing in it at all? A. No.

Q. Did you take the gun apart at all? A. No.

Q. Where did you keep the gun in your home? A. In the drawer.

Q. Did you have any bullets for it? A. No.

Q. Well, did Banks have any bullets for it? A. No, not that I know.

844 *Frank Askew—For People—Cross.*

Q. Did you ask him for any? A. I did not.

Q. Did you have a permit to keep this gun? A. I did not.

Q. Did you apply for a permit? A. No, I didn't.

Q. Well, during the time that you had it, did you loan it to anybody? A. No.

Q. Did Banks come back for it at any time? A. He never did come back for it. That is why I was holding it, until he come back for it.

Q. How many times did you take it out and examine it? A. I ain't never taken it out no more than just that day, he left it there, I looked at it.

845 Q. After he left? A. After he left.

Q. Did you have it out in the street at all? A. Never carried it on the street.

Q. Anybody else ever borrow it from you? A. No.

Q. Did you know it was against the law to have it? A. I did.

Mr. Wilkinson: No further questions.

Mr. Fleischman: No questions in behalf of the defendant Lester Haughton.

Mr. Foley: Step down. Thank you.

(Witness excused.)

Mr. Foley: May I have a moment to go in the corridor, your Honor. We are getting

846 some information and I think my next witness is ready, but I would like to find out first.

(Mr. Foley leaves courtroom and then returns.)

VELENA G. ELLIS, a witness in behalf of The People, having been first duly sworn, stated that she is a policewoman in the Police Department of the City of New York, shield 190, assigned to the Juvenile Aid Bureau, and testified as follows:

Direct examination by Mr. Foley.

Q. Were you a policewoman employed by the City of New York on the 8th day of February of 1947? A. I was.

Q. On the early morning of that day did you in company with police officers go to the home of the defendant Haughton? A. I did. 848

Q. When you reached the neighborhood of his home; by the way, where did he reside? A. He resided at 741 Jennings Street.

Q. In the County of Bronx? A. Yes.

Q. When you were in the neighborhood of his home, did you and one of the accompanying officers go to a telephone? A. Yes, we did.

Q. And did you there call up a number which you had received from the hospital where he was employed? A. I did.

Q. Did you get the defendant Haughton on the telephone? A. I did.

Q. Do you know about what time that was in the morning of February 8th? A. That was about 849 ten minutes after one.

Q. Did you have a conversation with Haughton on the phone? A. A short conversation.

Q. What did you say and what did he say?

Mr. McDonough: I object, if your Honor pleases.

Mr. Foley: I will withdraw the question.

Q. Did you hang up the phone after the short conversation? A. I did.

Q. And did you proceed immediately to his home? A. I did.

Q. How far away were you when you were telephoning? A. About a block and a half, I would say.

Q. Who accompanied you there from the phone? A. Another detective at that time.

Q. Do you know his name? A. Yes. That was Detective Tracy.

Q. And what squad is Tracy from? A. The 11th.

851

Q. When you arrived at Haughton's home, about what time was it to the best of your recollection? A. I would say that was between five and ten minutes later.

Q. Five or ten minutes after the one ten telephone call? A. That's right.

Q. Did you remain there until Haughton left? A. I did.

Q. Was he dressing while you were there? A. He was.

Q. And did you leave in company with the officers and Haughton? A. I did.

Q. Where did you go? A. We proceeded to this building.

852

Q. Did you go by automobile? A. We did.

Q. Were you in the same car with Haughton? A. I was.

Q. How long did it take you to get here from that address on Jennings Street? A. Oh, I would say it took us about half an hour.

Q. What were the weather conditions on that night, Officer? A. It was a snowstorm that night.

Q. Did you have trouble with the car? A. Yes, we did.

Q. Did you have to get assistance? A. Yes.

Q. What was it? A. The car stopped and it was necessary to ask a bus to push us off.

Q. Do you know at what time you arrived at the District Attorney's office? A. I would place it about one forty-five to two.

Q. And when you arrived at this building did you accompany the other officers and the defendant Haughton to the District Attorney's office? A. I did.

Q. Do you know in what, to what room you went with him? A. I believe that it was a room on 6-M and I am not quite certain, but I think it is the room that I had seen, Mr. Ryan's room, I believe it was. 854

Q. He is the Chief Assistant District Attorney? A. Yes.

Q. And was he in there when you came there with Haughton? A. Yes, he was there.

Q. And were you present while he asked questions of Haughton? A. In the beginning, yes.

Mr. Foley: That is all.

Mr. Wilkinson: No questions on behalf of the defendant Moore.

855

Cross-examination by Mr. McDonough.

Q. Officer, you say that you had obtained this telephone number from the hospital where Haughton was working or employed, is that right? A. One of the other officers obtained it.

Q. You had never heard his voice on the telephone, had you? A. No, I hadn't.

Q. So that was the first time you ever spoke on the telephone with anyone by the name of Haughton, is that right? A. Well, I didn't ask for Haughton. I asked for Raymond.

Q. Now, when you say you went to his home, you were accompanied by a Detective Tracy? A. That's right.

Q. And who else? A. Just Detective Tracy and myself.

Q. When you got to the home who was with you, Detective Tracy? A. We entered the building together.

857 Q. And did anyone else meet you there? A. No, not in the hallway.

Q. Well, at any time at the home of the defendant Haughton, did you meet anyone else there? A. Yes. There were three other detectives there.

Q. And who were they? A. That was Detective Riedy and Detective Curley and Detective Shields.

Q. Detective Riedy, you say? A. Yes.

Q. Detective Curley? A. And Detective Shields.

Q. Then there was Detective Tracy? A. That's right.

Q. And yourself? A. Thats' right.

Q. Was there anyone else? A. Raymond Haughton's father and a woman who identified herself as the landlady.

858 Q. Now, when you say that Lester Haughton dressed, you weren't in the room when he dressed, were you? A. No, I wasn't.

Q. Who was in the room with him when he did dress? A. Detectives Curley, Shields, Riedy and Detective Tracy.

Q. So that all of the detectives, the male detectives were in the room when Lester Haughton

was getting dressed, is that correct? A. When Raymond Haughton was getting dressed.

Q. When the defendant Haughton was getting dressed? A. That's right.

Q. Do you know him as Lester too; do you know him as Lester? A. No. I know him, I knew the name of Raymond.

Q. Do you know that the indictment has his name as Lester? A. No, I don't.

Q. So that you don't know that he is not known as Lester? A. I beg your pardon?

Q. You wouldn't say that he is not known, that his name is not Lester? A. I don't know him as 860
Lester. I know him as Raymond.

Q. That was because someone told you that, is that right? A. Because he identified himself as Raymond.

Q. And didn't someone tell you to ask for Raymond? A. Yes, I was told to ask for Raymond.

Q. Some member of the Police Department told you to ask for Raymond? A. That's right.

Q. So that is how you got the name Raymond, from someone in the Police Department? A. Yes. I was told to ask for Raymond.

Q. By a member of the Police Department? A. That's right.

Q. Now, when Raymond was getting dressed—I withdraw that. How large is the apartment occupied by Mr. Haughton and his son, Lester Haughton? A. I wouldn't know how large the apartment is. 861

Q. Well now, where did Raymond go or Lester go to get dressed? A. As you enter the apartment, the apartment, the door leading from the hallway to the apartment opens on seemingly a fairly long

hallway and there is a room directly as you enter to the left and it was in that room that Raymond and his father and the officers were.

Q. And where did you stay or remain? A. I seated myself at a table on which there was a telephone had been placed in the hallway, in a hallway of the apartment.

Q. And how far from this room where Raymond was getting dressed were you? A. Oh, about two feet.

Q. And was the door closed? A. It was closed and open from time to time.

863 Q. But it was closed? A. Yes, it was closed at one time.

Q. So then you know nothing of what took place in that room when Lester Haughton was getting dressed, is that correct? A. I do not.

Mr. McDonough: That is all.

Mr. Foley: That is all. Thank you.

Mr. McDonough: Oh, just a minute. I have some more questions.

Q. Now, when Lester got dressed and he left the building, was he taken into a police car? A. He was taken into an automobile.

Q. And who got into the automobile with him?

864 A. Three detectives who had been in the apartment when I arrived. Detective Tracy drove the car and I sat beside him.

Q. You sat beside him? A. Yes.

Q. And then Detective Curley and Detective Shields sat in the rear with the defendant Haughton, is that correct? A. Yes.

Q. And this was a stormy night? A. It was.

Q. Was it a windy night? A. It was a stormy night.

Q. And how did you proceed from the address in Jennings Street to the District Attorney's office? A. I am most unfamiliar with The Bronx. I really couldn't answer that.

Q. So you don't know whether a long route was taken or a short route was taken? A. I couldn't say, because I am not familiar with The Bronx.

Q. And how long do you estimate that it took you to get from Jennings Street to the District Attorney's office? A. Well, we stopped. As I 866
said, the car stopped and it was necessary to be pushed off. Oh, I would figure that it was a good half an hour.

Q. A half hour? A. Yes.

Q. How long was the car stopped? A. Well, I really couldn't say because it was necessary to wait. They were trying; two of the men got out of the car. I myself got out of the car and attempted to push it, but it just wouldn't budge in the snowstorm.

Q. You say when you got out of the car and attempted to push it, you got out of the car; who else got out of the car? A. Tracy got out of the car.

Q. He was the driver? A. Yes. 867

Q. Detective Tracy got out and who else got out? A. I don't know who else it was got out, but it was a man, one of the other men seated beside me in the car.

Q. And did you all go to the back of the car? A. We attempted to push from the side. I think two of us attempted to push at a time and the car didn't budge.

Q. So that left one other detective and Lester Haughton in the rear of the car? A. That left two.

Q. I beg your pardon? A. There were four men altogether.

Q. That left two detectives? A. That's right.

Q. And Lester Haughton in the rear of the car? A. That's right.

Q. And how long did you remain out of the car? A. Oh, I don't know; possibly about two or three minutes and then I got back in the car.

Q. And then you say you were pushed by a
869 bus? A. That's right.

Q. Do you recall where it was that you were stuck? A. Yes. It was right there off the Five Corners Bar and Grill, the bar and grill, I believe, from which I made the telephone call.

Q. And do you know the location of that place? A. I know it is known as the Five Corners and they told me it was the Five Corners.

Q. Would that be on Boston Road? A. I believe so.

Q. Now, is there a bus running on Boston Road? A. I really don't know.

Q. You are sure it was a bus that pushed the car? A. Oh, positive.

Q. And you are sure that you were stopped
870 at the Five Corners, this place known as the Five Corners? A. Some place in that locality.

Q. Well now, was that on, do you know whether it was Boston Road or not? A. I told you that I am unfamiliar with The Bronx and I really couldn't say.

Q. But at any rate, wherever you were stuck was where buses were running, is that correct? A. A bus pushed us.

Q. What kind of a bus was it? A. It was a bus.

Q. Well, was it a Surface Transportation bus? A. I really didn't notice.

Q. Was it a red bus? A. I did not notice.

Mr. McDonough: That is all. Thank you.

Redirect examination by Mr. Foley.

Q. When you say that the weather was bad that night, will you please tell us what kind of a night or early morning it was February 8th? A. A very heavy snowstorm. 872

Q. Did you stay on in the District Attorney's office until late that morning or later that morning? A. I did.

Q. About what time did you leave? A. Oh, I believe it must have been possibly after four.

Q. How deep was the snow outside this building at that time? A. I believe it was almost up to my knees.

Mr. Foley: Thank you very much.

The Court: That is all.

(Witness excused.)

Mr. Foley: Now, if your Honor pleases, I had contemplated using Sergeant Butts of the Ballistic Bureau as my next witness. He is testifying in Brooklyn this morning, but he went on at eleven and I have every reason to believe he will be here. Might I ask that we recess for lunch now and I am confident we can resume on time. 873

The Court: He will be here after recess? We can take lunch thirteen minutes earlier.

Mr. Foley: Thank you.

The Court: That means the Jury will be back thirteen minutes earlier. You are admonished by the Court not to discuss the case. Form no opinion until the matter is submitted to you by me. Recess now until, it depends upon your service. Get back as soon as you can, about two ten.

(After Luncheon Recess.)

875 Henry F. Butts, Sergeant, Shield No. 824, Ballistic Bureau, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Foley.

Q. Sergeant, did you have the same rank, assignment and shield number that you have just given us in the Police Department of the City of New York on the 13th day of December, 1946? A. I did.

Q. And you are still in that assignment? A. Yes.

876 Q. You say that you are attached to the Ballistic Bureau? A. I am in command of the Ballistic Bureau.

Q. What do you mean by ballistics? A. Ballistics, briefly, is a study of the flight of a projectile, and that would include all of the things that cause the flight, that change or direct the flight, interfere with and finally terminate the flight. By projectile I mean bullet and that ballistics

takes in from the loading of a cartridge until the bullet has reached its target or is spent.

Q. And is your work in the Department directed exclusively to ballistics investigations? A. Yes, sir.

Q. And how long have you been doing that work? A. I have been making a study for the past 35 years or over of firearms and ammunition. That study has been observation at the factories, the manufacture of arms and ammunition, so that I am familiar with all phases of the manufacture; the firing of tests to determine the action of the arm; the effect of the arm on 878
the ammunition; the effect of the ammunition on the arm, and the effect of the ammunition of things fired at, into or through, and that would include the things that would come in contact with every-day wearing apparel, household furnishings, building material, dead and live animal tissue and dead human tissue.

Q. Now, Sergeant, in the course of these years that you have so specialized, have you on many occasions testified in court? A. During the past 28 years I have testified in the courts of this state, other states, Federal courts, army and navy courts-martial, and during that time I have testified well over a thousand times as a firearm expert. 879

Q. And in the course of your official duties, can you give us an approximation of the number of firearms of any type that you have tested? A. Many, many thousands.

Q. Did you, at the request of the District Attorney's office or the Police Department of the City of New York, make certain tests upon guns,

shells, bullets and fragments connected with this case? A. I did.

Q. Now, I show you People's Exhibit 12, and ask you whether that is one of the guns upon which you made tests in this case? A. It is.

Q. From whom did you receive it? A. Detective Foden on February 8th.

Q. On what date? A. February 8th of this year.

Q. Do you know at what time? A. About nine o'clock in the morning.

Q. And when did you conduct your tests with it? A. Well, if I got it from him at nine, I started at 9:01.

881

Q. Did you return that gun, then, to Foden, People's Exhibit 12? A. I did.

Q. At about what time? A. Before noon.

Q. Now, what were the tests that you conducted with this gun, People's Exhibit 12, while you had it in your possession? A. I discharged cartridges, firing the bullets into absorbent cotton and recovering the bullets from the cotton. I recovered the ejected shells, and those I will call my test bullets and test shells. I then later made microscopic examinations and comparisons between my test bullets and shells with other bullets and shells.

882 Q. Well, now, I hand you for inspection People's Exhibit 8, and ask you whether or not that is one of the shells which you subjected to comparison with your test bullets?

The Witness: I will have to refer to some memoranda. There are twenty-four pieces that I have in mind.

A. I did.

Q. Was that for the purpose of determining whether or not that specific shell in evidence here as People's Exhibit 8 had been fired from People's Exhibit 12?

Mr. Wilkinson: I will object to the form of the question as leading.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

A. It was.

Q. Could you reach a conclusion, after examination of People's Exhibit 8 and comparison with your test bullets, as to whether or not it had been fired from People's Exhibit 12? A. I did. 884

Q. What was your conclusion? A. It was fired from Exhibit 12.

Q. I now hand you People's Exhibit 9 in evidence, and ask you whether you conducted a similar experiment and comparison with that shell? A. I did.

Q. Did you reach a conclusion? A. I did.

Q. What was it? A. It was fired from Exhibit 12.

Q. I now show you People's Exhibit 10, which has been described here as a piece of copper case, and ask you whether or not it was submitted to you for examination? A. It was. 885

Q. And after your examination, could you reach a conclusion as to whether or not People's Exhibit 10, which you now hold, had been fired from People's Exhibit 12? A. I did.

Q. What was it? A. It was fired from Exhibit 12.

Q. Sergeant, I now show you People's Exhibit 18 in evidence, containing five empty shells, and

ask you to examine them and determine whether or not they were submitted to you for tests and opinion? A. They were.

Q. Did you examine and test all of them? A. I did.

Q. And could you, at the conclusion of your examination, determine whether or not they had been fired from People's Exhibit 12? A. I could.

Q. Were they? A. They were fired from Exhibit 12.

Q. Sergeant, I show you People's Exhibit 13, and ask you whether or not that was submitted
887 to you for a like purpose? A. It was.

Q. And after you had conducted your examination, could you give an opinion as to whether or not that was fired from People's Exhibit 12? A. I could.

Q. Was it? A. It was fired from Exhibit 12.

Q. I now show you People's Exhibit 14, Sergeant, what has been described as a piece of copper case and a copper-jacketed bullet, and ask you whether you examined them to determine whether or not they were fired from People's Exhibit 12? A. I did.

Q. And did you reach a conclusion as to whether they were or not? A. I did.

Q. Were they fired from People's Exhibit 12?
888 A. They were fired from Exhibit 12, and the two pieces are a part of one bullet. I made a comparison with the large piece, and I was also able to make a comparison with the small piece of jacket, and the small jacket fits, so that those two pieces were one bullet and they were fired from Exhibit 12.

Q. Now, People's Exhibit 15. Will you please examine that and tell me whether or not it was

submitted to you for experiment and comparison? A. It was.

Q. Have you reached an opinion as to whether or not it was fired from People's Exhibit 12? A. I have.

Q. Was it? A. It was fired from Exhibit 12.

Q. I now show you People's Exhibit 16 in evidence, Sergeant, two pieces of copper case, and ask you whether you have heretofore examined them? A. I have.

Q. And at the end of your examination, could you form an opinion as to whether or not they had been fired from People's Exhibit 12? A. I could. 890

Q. Were they? A. They were.

Q. And could you determine whether or not they were part of one bullet? A. I could. They were part of one jacket, and both parts I was able to compare the characteristics, that both parts were fired from Exhibit 12, and both parts are part of one jacket, one bullet.

Q. I now show you People's Exhibit in evidence Number 17, what have been described as two pieces of copper case and a piece of lead core, and ask you whether or not you have made an examination of them? A. I have.

Q. Could you determine whether or not they had been fired from People's Exhibit 12? A. I could. 891

Q. Were they? A. They were.

Q. Could you determine whether or not they do form part of one bullet? A. I could. The lead is the core or was the core, and the lead fits into the large part of the jacket as I am holding them together, and the small part of the jacket is part of the side as I am holding it together. The

core cannot be identified by the characteristic marks because there are none on the core, but the core shows that it was part of the jacket, and both parts of the jacket I was able to identify as having been fired from Exhibit 12, so that the three pieces were one bullet and they were fired from Exhibit 12.

Q. Now, Sergeant, all of these exhibits to which I have directed your attention and concerning which you have testified, other than the guns, from whom did you receive them? A. Detective Huston of the Ballistic Bureau.

893 Q. I now show you People's Exhibit 19 in evidence, and ask you whether you have examined it? A. I have.

Q. What is it, please? A. That is part of a .38 special lead bullet.

Q. I now show you People's Exhibit 1 in evidence, and ask you whether you have seen it before? A. I did.

Q. When did you receive it, Sergeant? A. December 14, 1946.

Q. And who gave it to you? A. Huston.

Q. Did you make tests with this gun? A. I did.

Q. And did you recover the test bullets? A. I did.

894 Q. Did you compare People's Exhibit 19, which you have just identified as part of a .38 caliber lead bullet, with your test bullets from the gun, People's Exhibit 1? A. I did.

Q. Could you determine whether or not this People's Exhibit 19 came from People's Exhibit 1? A. I could not, because it was too badly deformed.

Q. The most you could say about People's Ex-

hibit 19, after your experiments, was that it was part of a .38 lead bullet? A. Yes.

Q. Too badly deformed to determine from which gun barrel it might have come? A. That is correct, sir.

Q. Here is People's Exhibit 20 (handing to witness). Have you examined that before? A. I did.

Q. And did you compare it with your test bullets fired from People's Exhibit 1? A. I did.

Q. Could you determine whether or not it had been fired from that gun? A. I could not.

Q. It is a .38? A. It is a .38 special bullet.

Q. Does this People's Exhibit 1 carry and fire 896
.38 special ammunition? A. It does.

Q. This is People's Exhibit 21 in evidence (handing to witness). Will you please tell us what it is? A. That is, the best I can say, a piece of lead. I cannot find anywhere on it any rifling marks or any characteristic marks, so that the best I can say it is a piece of lead.

Q. And if it is part of a bullet you couldn't determine the caliber? A. I could not.

Q. This is People's Exhibit 22 in evidence, Sergeant (handing to witness). Have you examined this before? A. I did.

Q. Did you make comparisons between People's Exhibit 22 and your test bullets? A. I did. 897

Q. Could you determine from such comparison whether or not it had been fired from People's Exhibit 1? A. I could not.

Q. It is a .38 lead bullet? A. It is a .38 special lead bullet.

Q. This is People's Exhibit 23, Sergeant (handing to witness). Have you previously examined this exhibit? A. I have.

Q. Could you determine whether or not it had been fired from People's Exhibit 1? A. I could not.

Q. Can you tell us what it is? A. It is part of a .38 special lead bullet.

Q. Too badly deformed for comparison? A. It is.

Q. And this is People's Exhibit 24 in evidence, Sergeant (handing to witness). Has it previously been submitted to you for examination? A. It has.

Q. Could you determine whether or not it had been fired from People's Exhibit 1? A. I could not. It is a .38 special copper-coated lead bullet.

899

Q. When you say copper-coated, is there a distinction between a bullet copper-coated and a copper-jacketed bullet? A. There is. In the copper jacket the jacket is of a piece of sheet metal. This copper coating is like a copper flashing.

Q. What is that, Sergeant? I don't know. A. Well, a plating, let us say.

Q. Now, Sergeant, all of these exhibits that I have shown you since I last asked you the question about where you had received the exhibits, all of these concerning the .38 lead bullets or parts thereof, from whom did you receive them? A. Detective Huston of the Ballistic Bureau.

900

Q. Did you on the 14th day of December, 1946, go to Fordham Morgue? A. I did.

Q. Did you meet Dr. Hochman, the Assistant Medical Examiner of Bronx County there? A. I did.

Q. Were you present when he performed an autopsy upon the body of one James M. Burke? A. I was.

Q. I now show you People's Exhibit in evidence Number 2, and ask you have you seen it before? A. I have.

Q. Where did you get that one, Sergeant? A. I saw Dr. Hochman take it from the body of Detective Burke.

Q. And did you take that to the Ballistic Bureau? A. I did.

Q. What is it? A. It is a .45 caliber automatic pistol bullet.

Q. And did you compare that bullet, People's Exhibit 2, with the test bullets you made or fired from the automatic, People's Exhibit 12? A. I 902
did.

Q. And after your comparisons, can you give an opinion as to whether or not People's Exhibit 2 was fired from People's Exhibit 12? A. I can.

Q. Was it? A. It was.

Mr. Foley: He is your witness.

Cross-examination by Mr. Wilkinson.

Q. Sergeant Butts, People's Exhibit 12, what would you classify that as? A. That is a .45 caliber automatic pistol of the United States Army type.

Q. What year is the make of it? A. Of the 903
make?

Q. Yes. A. That I don't know.

Q. Would you be able to tell by examining it (handing to witness)? A. It was made during the last war. What year I can't tell you.

Q. You have previously examined this, though, have you not? A. I have.

Q. And that was at your office? A. Yes.

Q. Did you fire it, too? A. I did.

Q. Did you examine it before you fired it? A. I did.

Q. Did you break it down, break it apart? A. Only to remove the magazine.

Q. Before you fired it? A. Yes.

Q. Did you take the head off it or break it down at all before firing it? A. The head? I don't know what you mean.

Q. Did you take the top of it off? A. The slide?

Q. The slide. A. No.

Q. Did you examine inside before firing it? A.
905 I examined the barrel through the muzzle with a light running through from the breech.

Q. From that examination were you able to determine when the last time was that the gun had been fired? A. There was recent powder residue in the barrel. By recent, it was residue at the muzzle that was not yet hardened. It was soft enough so that by wiping with my finger I could get residue. The residue hardens, and it is a progressive hardening. When the gun is recently fired you can wipe off almost of the residue, particularly with a revolver, by rubbing it with your finger, and after an interval of a week the residue gets hard, unless it has been kept in a moist place where the humidity percentage
906 has been higher than fifty.

Q. Well, now, you examined that gun on what date? A. On the 14th.

Q. Of? A. No; the gun on February——

Q. People's Exhibit 12. I direct your attention to that. A. February 8th. The gun came in with Foden on February 8th.

Q. And you proceeded then to examine it? A. Yes.

Q. Now, before firing it you proceeded to examine the barrel of it? A. Yes.

Q. And you saw evidence there of recent firing? A. There was evidence of firing; let us say rather than recent, since the last cleaning there was still in the barrel powder residue.

Q. From your examination of the powder residue, are you able to state, in your opinion, when the gun had last been fired? A. No.

Q. Is it possible, from the examination you made of it and the residue that you had found there, that the gun had been fired within the last three weeks prior to your examination? A. I 908
don't know that it had.

Q. You don't know that it had, but would it be possible that it had been fired? A. It might have.

Q. Did you then clear this barrel before you fired your test shots? A. I ran a dry patch, that is, a piece of cotton flannel, through without any oil or any abrasive; just ran that through with a wooden rod to take off surface residue.

Q. And then how many test shots did you fire? A. Three or four.

Q. And you preserved those bullets? A. Yes.

Q. Do you have those bullets with you? A. No, I don't.

Q. Did you keep those bullets? A. Yes; they 909
are at the office.

Q. What kind of shells did you use, or what kind of bullets did you use in firing the gun? A. The shells I couldn't tell you offhand, but of the same manufacture as the shells in the exhibits, and they were FA-41; that means they were loaded at Frankfort Arsenal in 1941, and I used FA-41 cartridges.

910 *Henry F. Butts—For People—Cross.*

Q. Did you use any copper-jacketed ones? A. Yes. You mean copper-jacketed bullets?

Q. Yes. A. Yes.

Q. And how many copper-jacketed ones? A. I would say three or four.

Q. They were all the ones you used? A. Yes.

Q. In your opinion, Sergeant Butts, would the barrel of the gun undergo any changes in a period of two months? A. No.

Q. Does weather or climate have any effect on the barrel of a gun? A. It can.

Q. Does erosion take place or rust in the bar-
911 rel of a gun if it is not used or cleaned in two months? A. Not erosion. Erosion is the thing that you get from firing the gun. Corrosion or rust could, if it were in some place where the percentage of humidity was higher than fifty. You then get a rust that starts as a pinkish rust and develops through and goes into a dark, deep maroon; but there wasn't rust in the barrel. That was part of my examination. All that I got was a powder residue. I didn't get any rust.

Q. Now, these exhibits that have just been shown to you, you have seen all of those on a prior occasion, is that correct? A. Many times.

Q. Now, have you put a mark on these exhibits? I refer to People's Exhibit Number 8. A. I have
912 carried them through on the mark made by the person of origin. Dr. Hochman, for instance, would be CHH-JB, and Huston's markings ran from HHX, H-1, H-2, H-3, and then, I think it is Holt, his markings are JH.

Q. Do you not, Sergeant, put a mark on your own exhibits, exhibits that you yourself have examined? A. I don't mark them; no. I carry them on the mark that is on them when they come to me.

Q. Have you ever put marks on exhibits? A. On evidence?

Q. On evidence. A. If I recover it, yes; if I don't recover it, no.

Q. Have you ever put marks on evidence that you have examined? A. No. I may have, but I say no; it is not my practice. If you can think of some time in the past twenty-eight years that for some reason I have added an HB to it, I don't doubt that that is so, but in the evidence I carry it on the mark that is already on it before it comes to me.

Q. Now, I show you People's Exhibit Number 914
8, and I ask you what that is? A. It is a .45 caliber discharged shell.

Q. Now, you have testified, Sergeant, that that shell was fired from People's Exhibit Number 12. A. That is correct.

Q. What test did you make to come to that conclusion? A. The examination of the characteristic marks on the primer and on the head of the shell. The primer is that part that I am indicating, the copper cap in the center, and the head of the shell is the part that I am indicating that bears the letters FA-41. Those marks are on there, because at the instant of firing the explosion drives the bullet forward through the barrel, and the same pressure drives the shell 915
head, the entire shell, of course, but the shell head against the breech block, that part through which the firing pin goes to crush the priming mixture in the primer.

The finishing of the breech block leaves ridges, little projections, little irregularities, and, as the force of recoil drives the head of the shell against the breech block, that breech block acts as a steel

die and impresses whatever pattern is on it, just as if we took a number or a letter punch and punched it into a piece of brass and copper, only here the material is driven against the die, instead of driving the die against the material, and it is an examination of those characteristic marks that enables me to identify it as having been fired from Exhibit 12.

Q. Do all of those shells bear the same mark? A. Yes.

Q. Did you fire some test shells, too? A. Yes. The comparison was between the characteristic
917 marks on the test shells and the characteristic marks on the evidence shells.

Q. Do you have those test shells with you? A. No.

Q. Where were these comparisons made? A. At the Ballistic Bureau.

Q. Did you make them yourself? A. Yes.

Q. How many test shells did you use to determine the markings from this gun? A. Either three or four.

Q. Now, Sergeant Butts, on People's Exhibits 19, 20, 21, 22, 23 and 24, you testified they were pieces of lead, some of them of 38 caliber, and you were unable to identify the gun that had discharged them, is that correct? A. That is cor-
918 rect.

Q. And all of the articles that were submitted to you, all of the parts of .38 caliber bullets that had been submitted to you in this case, you were unable to identify the gun that discharged them, is that correct? A. That is correct.

Q. Now, I show you People's Exhibit Number 13, Sergeant, and ask you if you have seen that before? A. I have.

Q. And how are you identifying that particular bullet? A. By the H on the base of the bullet.

Q. And what does the H represent? A. Huston.

Q. Have you any markings of your own on it? A. No.

Q. Did you compare that bullet with your test bullet? A. Yes.

Q. What comparisons did you make? A. The same as with the others, with the comparison microscope; a comparison of the characteristic marks existing on the test bullets and on the evidence bullets.

Q. Well, what characteristic marks exist on 920
that bullet? A. Well, that would be hard for me to say, because they are microscopic. The characteristic marks are the marks that are left by each barrel and are individual to that particular barrel and no other, and the reason for the marks, they are actually lines, is because of microscopic projections on the inner surface of the barrel, and, as the bullet is driven through the barrel, those microscopic projections engrave, actually cut away metal. It is just as if we take an iron-toothed rake and bend the teeth or break a tooth out and draw that rake through a patch of sand. We would have a pattern, and if we drew the rake through another patch of sand at the same angle we would have the same pattern, and we would 921
continue until we change the position of the teeth.

Now, the characteristics that I speak of do not exist, that is, like characteristics do not exist, in any two barrels. Each barrel is peculiar to itself in that it has characteristics different than every other, and those lines and those patterns are what we call characteristic marks.

Possibly I can clear it up. A comparison microscope is a compound microscope joined by a comparison eye-piece, and the evidence bullet is set upon the stage of one and the test bullet on the stage of the other. The two images are brought through their respective tubes and across a prismatic bridge into a single eye-piece, so that you examine two objects at one time, and if we assume that my fingers are now forming one of the bullets that I have mentioned, it would bring it up, and in the single eye-piece there would be a matching or a fusing together of lines. If we
923 don't have the same area, that is, the area on the bullet that has been in contact with a like area in the barrel, there won't be any matching of lines; there won't be any fusing of lines. Then the bullets are rotated and each area, each land and groove area, examined successively and a check made of those patterns on each area.

Q. Well, is it necessary for you to have a preserved bullet in order to determine the incidental markings that would be on it from the barrel of any individual gun? A. By preserved bullet, I don't know what you mean.

Q. When you made your test shots, into what did you fire your shots? A. Absorbent cotton,
924 that is, the regular one-pound rolls about a foot long, ten or twelve inches long, and about four inches in diameter. That cotton is unrolled, and the blue divider paper that is in it is taken out and it is re-rolled, and the bullets are fired in lengthwise, so that the .45 would stop in about four to five inches. The reason for the stopping is due to the motions of the bullet forward and rotating, and the bullet picks up cotton and winds

cotton around itself, and the cotton fibers pulling apart have a braking effect, so that in four to five inches you have a ball plus a wrapping of cotton of about an inch and a quarter or an inch and a half in diameter, and in the center of that ball of cotton is embedded the test bullet, so you get an undeformed, undistorted specimen, and the cotton doesn't do anything to the characteristic marks.

Q. So that on that test bullet those characteristic marks are preserved on the bullet, is that correct? A. Well, by preserved——

Q. Well, they are on there? A. They are on 926
there.

Q. The bullet is not deformed in any way. A. They haven't been obliterated.

Q. Immediately after or within a short space of time after the firing, you make your test with that test bullet, is that correct? A. The time element immediately after that isn't necessary. Those characteristic marks, unless something be done to obliterate them, will be on there twenty years from now. They don't fade out.

Q. Now, I show you People's Exhibit 13 that you have before you, and ask you if that bullet is deformed? A. Yes; partially it is.

Q. Are you able to see the characteristic marks on that bullet? A. Yes. 927

Q. Do you see them now? A. Not with my naked eye; no; but on a microscope, yes. The deformity extends a little over half way down on one side. Then below that deformity the characteristic marks, and the rifling marks are there.

Q. But they are not discernible to you now? A. No, and they do not exist up on the part that

is deformed and distorted. They exist below that toward the base. Now, the bearing surface that bears those characteristic marks does not extend from base to nose. They extend only as far as the bullet has been in contact. They don't go up on the curved part of the nose.

Q. Isn't it true that each individual barrel leaves different marks on a bullet? A. Yes.

Q. Some of the markings from different guns may be toward the nose of the bullet or toward the rear of it, depending on the gun? A. Depending on the gun. Now, if we have a loose barrel—by
929 a loose barrel I mean an over-sized barrel and an under-sized barrel, so that the bullet does not fit snugly—then that bullet snakes or travels out the barrel like that (indicating), and it may strike on the nose and then strike on the base, but that is something entirely different. That we get where we fire sometimes automatic pistol bullets in a revolver barrel or an under-sized revolver bullet, but we don't get that on the automatic pistol bullet.

Q. Of this particular gun? A. Yes.

Q. Well, now, what portion of the bullet from this particular gun would bear the characteristic marks? A. Approximately or slightly under half of its length.

930 Q. That is, the front half? A. Yes.

Q. Or the rear half? A. Yes. The rifling marks are visible. The rifling marks are those marks extending to the base. Now, within those marks every Colt gun will give us six grooves and six land marks. That's characteristic of the Colt.

Q. Any Colt gun? A. Any Colt, and that is the manufacturer's characteristics. Now, the indi-

vidual characteristics are the lines within those land marks and the lines within the groove mark area.

Q. Well, the only marks that are discernible there to the naked eye are the marks that are on a Colt gun? A. The manufacturer's characteristics; yes; six lands and six grooves visible to the naked eye.

Q. And looking at that bullet, why, you would be able to say it was fired by a Colt gun? A. I would make a pretty good guess at it; yes.

Q. But as far as the incidental markings on this bullet, or the markings by which you compared it to the test bullet, you are unable to state what those markings are at the present time, is that correct? A. That is it. They are microscopic. 932

Mr. Wilkinson: No further questions.

By Mr. Fleischman.

Q. Sergeant Butts, when a .45 is fired the shell is ejected, isn't that correct? A. Yes.

Q. How, or in what direction, would the shell be ejected?

The Witness: Might I have the gun?

Mr. Fleischman: Yes (handing to witness). 933

A. If the gun be fired normally, with the sight uppermost and firing in the direction that I am holding it now, the shell would be ejected towards the judge's chair, to the right and rear. If the gun is held as I am holding it now, with the sight to the left, the shell would be ejected and almost be straight, and might drop down.

The ejection depends on the position in which the gun is held. The four positions will change the position of the ejection, and that is for this reason: The extractor hook, that part that I am pointing at, is on the right side of the breech block or bolt, and that extractor hook fits around the head of the shell and into the head cut, so that on recoil that is pulling back, and there is an ejector post on the left side of the gun, so that the head of the shell is being drawn rearward by the extractor hook until it meets the ejector post, which flips the shell in that manner (indicating) to the right, so that it comes out of the ejection part.

Q. To the right and to the rear? A. To the right and to the rear, and on the forward motion the slide will strip the top cartridge from the magazine and bring it into the chamber and cock the gun so it is again ready for firing; and there must be a separate and distinct pull for each shot fired.

It is called automatic, and that is a misnomer. It is semi-automatic, in that it simply automatically loads or is self-loading and is not self-firing, like a full automatic. It will not continue to fire while there is a pressure on the trigger. I am pressing the trigger (indicating). Released. Now it will fire, so there must be a separate and distinct pull for each shot.

Q. When these empty shells are ejected, can you say in a distance of inches or feet how far they would be thrown? A. That is determined by the height above the floor, and they usually strike from nine to twelve feet, in that direction (indicating). If they come in contact with some-

thing on a smooth floor like this, they will strike and bounce. They may strike against the wall and they will bounce most anywhere.

Q. Assuming there was no interference with the flight of the shell, how far a distance would you normally say they would be thrown? A. I would look for it between nine out to fifteen feet to my right and rear; that is, holding normal and firing from my shoulder height. It is a curve. It isn't a straight line.

Q. Sergeant Butts, you say that you found some residue in the barrel of that .45 when you examined it? A. There was powder residue. 938

Q. And that residue hadn't hardened, is that correct? A. That was apparently so.

Q. You also stated—I want you to correct me if I am stating you incorrectly—that that residue in normal temperature would harden in about a week's time? A. It does.

Q. That is a fair statement? A. It does, unless your percentage of humidity is kept around fifty, so that there is a moisture on the powder residue. To make a definite statement to you, I would have to know just what it was kept in; something about where it was kept. Do you get what I mean?

Mr. Fleischman: Yes, I understand you, Sergeant. 939

Q. Let us assume, Sergeant, that this gun was fired on the 13th of December, 1946, and that you saw the gun for the first time on February 8, 1947. Now, would you say that it was probable that this gun had been kept in a moist temperature? A. That's a hard question, to say where it was kept. The factors that you have to take into

consideration are, first, how oily was the barrel at the time that it was fired, whether you have a surface of oil before your residue builds up, and whether you fired enough to take out that surface of oil. The way that that appeared at the muzzle I wouldn't say that that was too much to go on, because I didn't have enough of it. I didn't take the barrel down, but I did run a patch through, and my recollection of it is this: that the residue had a dry or drying feel. That's something I can't probably explain to you, but when you go through with a patch, if it is new, fresh residue, the residue is almost like a lubri-
941 cant. There is no grab on the patch; there is no holding, and, as it starts to dry, it starts to harden a little, and it is harder to push the patch through. Now, I know that isn't much of an explanation, but it is one of those things that you get by feel.

Q. Would you say, then, that the gun had been oiled? A. I wouldn't attempt to say.

Q. Can you answer or can you state in your opinion, if the gun was fired on the 13th of December and you found that residue in the barrel which hadn't hardened on February 8th, wouldn't that indicate to you that it had been kept in a moist place? A. Well, it indicated this to me.
942 I can tell you as much and what significance it has. When I ran my finger around and got some residue, I was more or less surprised.

Q. That was a powder residue you got? A. A powder residue, but I didn't get any definite indication from it; but when I was able to get some powder residue out of that muzzle I was rather surprised. Now, that would mean to me that it was kept in a place that was possibly moist, or

there may have been a good oil base in the barrel; I don't know.

Q. In other words, an additional element that you would have to have, or a known element, would be the oily condition of that barrel before you could determine whether or not the softness of that residue was caused by a moist atmosphere? A. That is correct.

Q. Or recent firing? A. Or recent firing.

Q. Now, Sergeant Butts, isn't it usual for the rifling in an automatic like the one we have here to become rusted and pitted after a period of two months of disuse? A. That again depends on the 944
percentage of moisture. If we have a percentage higher than fifty, a relative fifty, we begin to get rust. Now, if it is kept dry it won't start to rust.

Q. Sergeant Butts, when you examined the barrel of this gun, or rather the rifling, did you look at the rifling in the barrel? A. No; only by looking through it. Taking a light like this, just as I am looking through it now, you can see the rifling and you still see powder residue. That little blackish, fuzzy stuff in powder residue (indicating). Now, let the light go in the opening. Hold it so, like that (indicating). Tilt it around a little.

Q. Can you, by an examination just as you have indicated here, by looking into the bore, deter- 945
mine whether or not that bore is pitted? A. Sometimes the pit has an absence of metal, and the pit is caused by rust. Either the rust which might fill the pit and cover it has been removed, or it is so pitted that you can see the pit with that sort of an examination.

Q. Now, would that pitting in a bore cause any characteristic markings on the projectile? A.

The pitting itself does not. The pitting exists as a hollow, but the hollow has edges, and, as a bullet travels across it, there may be stripping, what we call metal stripping, metal fouling stripped from the bullet, and that may build up in a pit and there would be a scratch from the metal that is in there. Now, that sometimes acts as a burr would. Let us say there is a projection and we fire five, six, eight bullets through it. The first shot through leaves from the bullet a coating of itself on the burr. The second shot, just like a second coat of paint, will build up some more.
947 The third shot builds up another coat, so that maybe on the fourth shot, that one has jarred all of this coating loose. Now, each of these bullets fired would show a wider mark on the bullet, a wider gouge, until possibly the fourth or fifth takes out that metal fouling, and we are again back to a narrow gauge where there was no bullet coating. It is a projection that cuts into the bullet, not a depression.

Q. Would rust cause any markings, characteristic marks? A. Rust will scratch a bullet; yes. Rust will scratch a bullet.

Q. Now, Sergeant, People's Exhibit 17. You say, Sergeant, that you were able to determine that this lead core came from these fragments
948 of jacket by matching them up. Will you match them up for me, please, sir? A. I will try to. The part that I am indicating is the base of the bullet, that open ring, and this is the base of the core. The core will fit in that manner below this bent-over area. It will fit as you play with it in that manner (indicating). The wrinkled part would be the nose part, and the part having the rifling marks would be the base part, and that

fits down. Now I am taking the core out. It is that part there (indicating). Now I am fitting that projection into that little curve right there (indicating).

Q. It is not a very good fit, is it, Sergeant? A. I would say it is perfect. Continue right up through. Here's this curve (indicating). Continue through there (indicating).

Q. Sergeant Butts, the lead core of the exhibit I just showed you——

Mr. Foley: What number, please?

Mr. Fleischman: That would be Exhibit 17. 950

Q. (Continuing) —there are no characteristic markings on that lead core, are there? A. No, there are not.

Q. The characteristic markings, if any, would be on the jacket? A. That is correct.

Q. Where you have got a bullet with a jacket and a lead core? A. That is correct. The lead is not in contact with the inner surface of the barrel, the lead itself. The lead is inside of the copper jacket.

Q. Sergeant Butts, I direct your attention to Exhibit 22, which you testified to is a .38 calibre bullet. A. Yes. 951

Q. You also testified that you could not determine whether or not it was fired from this revolver, which is People's Exhibit 1. A. That is correct.

Q. What is there about that bullet that prevents you from identifying it with People's Exhibit 1? A. The manufacturer's characteristics are present. It was fired from a revolver of that

type and caliber—a revolver—but the particular revolver I can't say, because it has been in contact with something that has wiped and interfered with the microscopic characteristics. The manufacturer's characteristics are there. That was fired from a Smith & Wesson gun, but I can't tell the individual gun, so I don't know yes or no as to that one.

Q. Now, Sergeant, you say that a bullet will come in contact with certain objects that may wipe off the characteristics? A. Yes.

Q. What are those objects? A. Well, one of
953 the things that will wipe it off would be sand, and one of the things that can do it very nicely is that apron that we see vegetable men wear, the fellows having a vegetable store, that white duck or canvas apron. Some of those can wipe them off just as nicely as if you would wash a window.

Q. If a projectile came in contact with a human bone, would that wipe off the characteristics of a bullet? A. On the part that came in contact with the bone; yes. Let me emphasize. If this bullet struck a human bone glancing, it would obliterate whatever had been in contact where the bullet had wiped against the bone. If this bullet struck a bone so that it was mushroomed, so that all of the energy was expended in driving the head back on
954 the base, then very often I will have four or five onehundredths of an inch left on the base—that much that I am showing you—and that is perfect for an identification, because it hasn't been affected by the impact.

Q. Now, Sergeant, that bullet that you hold in your hand doesn't appear as if it came in contact with a hard object? A. It has been in contact with something harder than itself on the nose and on

the base. It has been in contact with something as it was key-holing. By key-holing I mean tumbling end over end, and it might have made a hole on impact in that direction. That is the reason I say key-holing, because it makes a hole that looks like a key-hole, something of that sort. The base is bent over and the side of the nose is dented in, showing that it was turning, and then the nose: there are three marks of impact on it. That part on the nose; this one here and that one there (indicating).

Mr. Foley: May I ask, is that Exhibit 22 that was being discussed? 956

Mr. Fleischman: That is, Mr. Foley. That is Exhibit 22.

Q. Of all the projectiles or bullets which you examined, you could not identify any as having been fired from this exhibit known as People's Exhibit 1? A. That is the .38 caliber.

Q. That's right. A. That is correct.

Q. Now, Sergeant, calling your attention to People's Exhibit 10, will you indicate to us where the characteristic markings would be found on this projectile? A. That is a land mark, that depression that I am indicating that runs here, and that is its width (indicating), and the lands 957 as you look throug the gun appear to be six car-tracks, six spiral car-tracks; so the land makes an indent or a channel in the bullet, and the groove area in the gun makes a raised portion on the bullet. We are clear on that?

Mr. Fleischman: That's right.

A. (Continuing) Now, the characteristic marks are either above the land mark running like that, or within the groove mark, and then again a land mark and then a groove mark, and then a land mark. It is within that area.

Q. Within the groove and the land mark? A. The part that I am showing you with my finger. It is within that that the individual characteristics exist. Now, within that area I may have ten lines, and if they are fine, sharply incised lines, I may get twenty in that little area, microscopic lines, and it is the matching of those lines forming patterns. Now, it is not just ten lines some-
959 where. Each line bears a fixed relationship to each other line and to each the edge of a land mark or the edge of a groove mark. Every line bears a fixed relationship to some fixed point on the jacket; not just ten lines spread around somewhere. Those lines may be spaced fairly evenly. We may get a space pretty much open that doesn't show any; then get four close together; then two; then another space; that is, as the patterns are formed.

Q. Sergeant Butts, do you in your calculations or comparisons make any provision for any changes that may have occurred in the barrel of the gun, such as rusting? A. Oh, if rust ap-
960 pears, depending on the type of rust. Now, the fine pinkish film that forms you can run a dry patch through and you will bring out most of that on your patch, and you won't have to take that part into consideration at all. If you had a deeply rusted barrel, within that rust itself you get characteristics. You can tell the moment you look at the bullet whether you have a rusty

barrel or whether you have a fair barrel or a perfect barrel. The bullet itself shows you that, and then those rust marks, they don't just make one mark. They continue until you have worn out that rust, and that depends on the heaviness of the rust.

Q. Well, I am assuming a situation where the gun is fired and at the time of firing there are no rust marks, and subsequently you make its comparisons with other bullets to determine whether or not projectiles were fired from that gun.

962

Mr. Foley: Just a moment, Sergeant. I object, if Your Honor please. It has been testified here by the Sergeant that there was no rust in this gun when the test bullets were fired.

The Court: I will permit it. Can you answer the question?

The Witness: Yes.

A. If the barrel is rusty, then instead of a dry patch you run in some powder solvent. Another thing, and I think I should charge you for it, is that common fuel oil that we pay seven, eight and nine cents a gallon for. It is one of the best rust removers out of a gun barrel there is, and 963
they get eighty-nine cents for a litle two-ounce bottle of it in the stores, but just soak your barrel wit' that oil and then take your barrel under hot water, runn ng hot water, so that you don't use a brush; you don't use a rag and your rust does not become an abrasive to make scratches for you; and you run that oil out with your hot water, and good hot water dries the barrel just like dishes; and then you give it another one.

That's what you do with a rusty barrel, and you get back to an original surface.

Mr. Fleischman: Thank you, Sergeant.

Redirect examination by Mr. Foley.

Q. Sergeant, you were questioned at some length regarding People's Exhibit 22 in evidence. You have identified it, I believe, as a .38 caliber lead bullet. A. That is correct.

Q. And the discussion concerned your inability to identify it as having been fired from People's
965 Exhibit 1, and I understood you to say that something must have wiped off the individual characteristics. A. Yes.

Q. Would you feel that in your opinion the firing of that bullet through a door and into an automobile tire would effectively wipe off the individual characteristics? A. Very effectively.

Q. All of these lead bullets which were submitted to you of .38 caliber were too deformed for you to form an opinion concerning? A. That is correct.

Q. Whereas you did form an opinion concerning all of the forty-fives, which were copper-coated? A. Yes, sir.

966 Q. Is a lead bullet of softer material and more susceptible of deformation than a copper-jacketed bullet? A. They are.

Mr. Foley: Thank you. That is all.

Mr. Wilkinson: No further questions.

(Witness excused.)

Mr. Wilkinson: May we confer with the Court?

The Court: Yes.

(Conference at the bench between the Court and Messrs. Foley, Delagi, Fleischman and Wilkinson.)

The Court: You are admonished by the Court not to discuss the evidence. Form no opinion until the matter is submitted to you by the Court.

I had intended to continue this afternoon, but the attorneys for the defendants have asked me to adjourn so that they may do some work. In fairness to them I will adjourn at this time.

968

You are excused until tomorrow morning at eleven o'clock.

Defendants remanded.

(Whereupon, the further trial of the case was adjourned until 11:00 A. M., March 27, 1947.)

New York, March 27, 1947.

(TRIAL CONTINUED.)

Before: Hon. James M. Barrett, County Judge, and a Jury.

Appearances: The same as heretofore noted.

969

ARTHUR SALMORE, 3256 Tierney Place, Bronx, New York, called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Foley.

Q. Are you employed in the office of the District Attorney of Bronx County? A. I am.

Q. Were you so employed on February 7th and 8th of 1947? A. I was.

Q. In what capacity? A. Grand Jury stenographer.

Mr. Foley: Do you concede the witness's qualifications, gentlemen?

Mr. Fleischman: No, Mr. Foley. Will you continue qualifying him.

Q. How long have you been a stenographer in the office of the District Attorney of Bronx County? A. Ten years.

971 Q. And how long have you been a Grand Jury stenographer? A. For the past three years.

Q. Have you studied stenography? A. I have.

Q. Where? A. At various schools. The High School of Commerce, New York; Rhodes Preparatory School, and various other training courses.

Q. Have you heretofore testified in court concerning your transcript of minutes taken by you in investigations? A. I have.

Q. Have you also testified concerning your transcript of minutes taken in capital cases? A. I have, sir.

Q. And since you entered into the District At-
972 torney's employ as a stenographer ten years ago, have you been continuously engaged in stenographic work? A. I have.

The Court: What system do you use?

The Witness: Gregg system.

Q. Did you on the 7th day of February take a statement from the defendant Moore?

Mr. Foley: Let me withdraw that, please. (Question withdrawn.)

Q. On the 7th day of February, were you present in Mr. Ryan's office? A. I was.

Q. Did you see the defendant Moore there? A. I did.

Q. Did you hear Mr. Ryan asking questions and Moore reply to the questions? A. I did.

Q. Did you make a stenographic record of the questions asked and the answers made? A. I did.

Q. Have you with you now your notes taken on that occasion? A. I have. 974

Mr. Foley: May I ask counsel whether they want the witness to testify from his original notes or from the transcript?

By the Court.

Q. Have you transcribed your notes? A. I have transcribed them.

Q. Have you with you a true and accurate transcription of the questions and answers, of the stenographic notes taken on the night in question? A. I have.

Q. Have you got it with you now? A. I have. 975

Mr. Foley: What is your answer, gentlemen?

Mr. Wilkinson: In behalf of the defendant Moore I am going to object to the reading into evidence of any notes taken by the stenographer on that particular night on the ground that the proper foundation has not

been laid; on the further ground it is immaterial, irrelevant and incompetent, and not binding on the defendant Moore.

The Court: Mr. Foley's question has not been answered. Are you objecting to the whole line of testimony on the ground that the proper foundation has not been laid?

Mr. Wilkinson: That's right.

The Court: Wherein has the proper foundation not been laid?

Mr. Wilkinson: The proper foundation has not been laid.

977 The Court: As to his qualifications?

Mr. Wilkinson: As to his qualifications.

The Court: Do you want to examine him?

Mr. Wilkinson: And under what circumstances these admissions were made.

The Court: Do you want to ask him any questions as to his qualifications?

Mr. Wilkinson: No; I am waiving the right to question him preliminarily.

The Court: We are past the qualification point. Now, what is the next part of your objection?

Mr. Wilkinson: The proper foundation has not been laid for the reception into evidence of any admissions alleged to have been

978 made by the defendant Moore.

The Court: On what do you base that?

Mr. Wilkinson: If these admissions are offered by the District Attorney, he must connect them, and a foundation must be laid before they are accepted into evidence.

The Court: Frankly, I don't understand the nature of your objection. Do I understand

you to be asking for a preliminary examination?

Mr. Wilkinson: I am not asking for a preliminary examination.

The Court: All right, now what foundation are you talking about? You say a proper foundation has not been laid?

Mr. Wilkinson: I have submitted the objection. I will rest on the objection as submitted.

The Court: No. The Court must understand what your point is, and I honestly don't.

Mr. Wilkinson: Well, I will rest on the 980
objection as made.

The Court: All right, then; overruled.

Mr. Wilkinson: I respectfully except.

Now, as to the request in behalf of the defendant Moore, the defendant Moore requests that the stenographer, if he is being permitted to read any admissions made by the defendant Moore, that he read those admissions from his original stenographic notes.

The Court: That will be complied with.

Mr. Foley: Then we need no more from the other defendant. It will have to be done from the original notes.

The Court: So far as the other defend- 981
ant is concerned, the Court instructs the jury at this time that this testimony is received only in so far as the defendant Moore is concerned, and not received in evidence as to the defendant Haughton.

Mr. Fleischman: And not binding on the defendant Haughton, if Your Honor pleases.

The Court: I so instruct. If it is not received in evidence it cannot be binding.

982 *Arthur Salmore—For People—Direct.*

By Mr. Foley.

Q. Will you then refer to your original notes taken on that occasion, and fix, first of all, the time the statement was taken? A. The statement was taken at the District Attorney's office on February 7, 1946, at 8:42 P. M.

Q. Will you please read from there on? Who was present? A. In the presence of Assistant District Attorney Ryan, Assistant District Attorney Lechtman, Lieutenant Dinan, Detective Green, Shield No. 1749 of the Homicide Squad:

983 The Court: Now, please read slowly and keep your voice up.

Mr. Fleischman: May we have the names of those present again, sir?

The Witness: Assistant District Attorney Ryan, Assistant District Attorney Lechtman, Lieutenant Dinan and Detective Green.

Q. Now, Mr. Salmore, those names that you have recorded as those who were present, are those the names of the men who remained officially part of the investigation while this statement was taken? A. That is correct.

Q. Were there other people in that room? A.
984 There may have been; yes.

Q. From time to time, quite a few? A. That is right.

Q. And their names are not recorded in the statement? A. No, sir.

Q. Now, will you please proceed to read the questions asked and the answers made by Moore?

Mr. Foley: Pardon me. Let me interrupt you just once more.

Q. By whom were the questions asked? A. The questions were asked by Assistant District Attorney Ryan.

Q. And the answers were made— A. And the answers were made by the defendant George Cornelius Moore.

Q. The defendant here? A. That is right.

Mr. Foley: All right; go ahead, please.

(Whereupon, the witness proceeded to read as follows:

"Q. What is your full name? A. George Cornelius Moore. 986

Q. Where do you live? A. 241 West 135th Street.

Q. Who do you live there with? A. I was living there with a boy named Adolph Clark.

Q. Is that a furnished room? A. It is.

Q. What's the apartment number? A. There is nothing on the door. I really don't know.

Q. How long have you been there? A. About, approximately three weeks.

Q. Do you remember Friday, December 13, 1946? A. I do.

Q. And were you in the Bronx that day? A. I was. 987

Q. At what time did you come to the Bronx? A. About six. I got in the Bronx six, six-thirty; not later than six-thirty.

Q. Where did you come from? A. From my house I walked to 134th Street and I seen this fellow.

Q. What was the name of that fellow you met? A. I really don't know.

988 *Arthur Salmore—For People—Direct.*

Q. Is it that you don't know or you don't want to tell me his name? A. I don't know it.

Q. Where did you meet this man? A. Between '34th and '35th on Eighth.

Q. Do you mean West 134th Street and West 135th Street and Eighth Avenue? A. Yes.

Q. Is that in New York County? A. Yes; right.

Q. After you met this man, what did you and he do? A. He and I was going to the Bronx to see some girl friends.

989 Q. Girl friends of his? A. Yes.

Q. What were the names of the girl friends? A. I really don't know.

Q. Had you ever been up to see them before? A. Never in my life.

Q. How did you come up to the Bronx? A. On the Eighth or Sixth Avenue subway.

Q. Where did you get off? A. It was before the last stop.

Q. What did you do then? A. We walked over till we had gotten to where the whiskey store was, and we was supposed to walk around the block and I seen the liquor store.

Q. Are you familiar with the Bronx? A. I think not.

990 Q. Are you familiar with Webster Avenue? A. No.

Q. Did you see a liquor store there? A. I did.

Q. I show you this picture and I ask you whether this is a picture of the liquor store? A. It is.

Q. Would you mark your name on the back of it? A. Yes, sir.

Q. Would you write that on the back of it? A. What should I write?

Q. Is that the place you robbed? A. I will write my name."

The Witness: At this point Mr. Ryan handed the witness the picture.

(Witness resumes reading as follows:)

"Q. Would you put today's date on it? What date is today? A. February 7th.

Q. 1947? A. Yes.

Q. And is that a picture of the outside of the store? A. It is. 992

Q. That you went into on December 13, 1946? A. It is.

Q. Would you write that on there, that this is the place? Write it any way you want to in your own wording. A. (Witness writes on the back of the photograph.)

Q. Now, what have you written?"

The Witness: The witness then read from the back of the photograph: "I entered this liquor store on December 13, 1946, at about 6:15 or 6:30 o'clock."

Mr. Foley: Now, let me interrupt you, Mr. Salmore.

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Q. Did you at that time mark as an exhibit in this investigation the picture which was being referred to? A. I marked that picture at that point or maybe just thereafter.

Q. And is that the picture which was being referred to at that point? A. That is correct.

Q. And do you find on there what was written by the defendant George Moore in your presence? A. I do, sir.

Mr. Foley: I am now referring to People's Exhibit 7, which heretofore has only been admitted as to the picture reflected on it, and not as to any writing on the back, and I will refrain from offering any more in evidence until we have completed all the testimony concerning it. There will be more.

Will you proceed, please.

(Witness resumes reading as follows:

"Q. Might it have been before that time? A. If it is I got the time mixed up.

995 Q. And before you entered this store with this man that you had come up from New York County with, you and the man went into this store? A. Yes.

Q. Before you went into this store did you talk to him? A. To the man?

Q. The man that was with you? A. Yes.

Q. What was the conversation you two had? A. The conversation was that, I told him first, I asked what are you going back there for and are the girls easy, and he said, 'Yes.' I was not intending about raping them, and he said, 'yes,' and I told him I came up because it was the 13th, to bull-shit around, and I said I wanted to go back and try to

996 win some money in poker, and we came to Webster Avenue. We came down there and he said go on, and I had the thing on me, and that was the first time I said it don't look right, and he said, 'Let's go in,' and I walked by and walked to the corner, and I said, 'No,' and he said I am going in, and I said, 'Fuck it; I am going in too; I have nothing for Christmas,' and I went in.

Q. Did you have a gun? A. I did not.

Q. And the other fellow have a gun? A. He did.

Q. What kind of gun? A. If I am not mistaken he had a gun.

Q. Where did you see it? A. Right in the street.

Q. Did you see it before you went in the store? A. No, I didn't, because he had it in his pocket.

Q. Before you and this man went in the store, did you talk about what each one would do in the store? A. He told me he would 998
stick the man up, and I would go back and get the money.

Q. Did he tell you how you were to stick up the man? A. It was a stick-up, and stick up the man and take him in the back.

Q. You were supposed to say what? A. We were supposed to go back there in the store, and they were to throw up their hands, and he told me that was the old man working in the store, a son and a father, and that's who I thought it was all the time, and then after that we were going to take him in the back and tie him up and get a cab and go home.

Q. Who went in the store first? A. I am 999
not sure; me or him.

Q. What happened? Did you both go in the store? A. Yes.

Q. What happened after you went in the store? A. After we went in the store and told him it was a stick-up, Detective Burke was shooting.

Q. You didn't know it was Detective Burke? A. Not until I saw the paper.

Q. You didn't know it was a detective when you saw the other man that it was a detective? A. No, I didn't.

Q. He was a stranger to you? A. Yes.

Q. Where did the other man come from? A. From behind the passageway of whiskey crates or cartons.

Q. What happened as he came from behind the cartons? A. He came out shooting; there was lots of shooting.

1001 Q. Yes. A. Well, we ran out.

Q. Did you have a gun? A. I did not.

Q. Did you fire any shots? A. I didn't have a gun; I couldn't.

Q. Did the man that was with you have a gun? A. The man with me had a gun.

Q. Did he fire shots? A. I don't know, sir.

Q. How many shots did you hear while you were in the place? A. A number of them.

Q. Can you give me an idea of how many? A. I cannot, sir.

Q. Did any bullets hit you? A. One hit me in the left forearm.

1002 Q. What happened when the bullet hit you? A. It paralyzed my arm. It twisted up. I thought I was hit closer to the heart, because my left side was practically paralyzed.

Q. Did you get any money in the place? A. I did not.

Q. Did you hear bullets fired from behind you? A. From behind me, and it was alongside of me, and everywhere.

Q. Were you nearest the man that came from behind the partition? A. I don't think so.

Q. Was the man you were with hit with any bullets? A. Not as I know, sir.

Q. Then after the shooting did you see this man who had come from behind the partition fall down? A. No, I really didn't. That's the truth. I didn't see him fall.

Q. You ran out of the store? A. I walked out of the store. When I got across to the curb I ran.

Q. Did the man that was with you run? 1004
A. He ran. From the time he heard the shots he started to run. I ran towards the man and he was still shooting, and I know because I looked behind me, and I fell on the floor and I got up. The pressure of the bullet didn't knock me down.

Q. Now, then, after you left the store where did you go? A. Well, you name the avenues.

Q. I don't know the avenues. Give me, if possible, if you remember give me the direction you ran. A. I'll give you the direction. I came out of the whiskey store. I turned right to the corner. I run up that corner to a bridge going over something. It
1005
was a highway or tracks there. I seen some children on the bridge, and I turned right again to a school yard and I seen myself walled in, and that's where I lost him. He was walled up there. I didn't remember where I was going, and the next thoroughfare I seen I was walking up three-quarters of the way up and I met a colored fellow with a dog.

Q. Was that up a hill? A. Yes, it was.

Q. Can you describe it to me? A. It was made of bricks.

Q. The pavement was of brick? A. If I am not mistaken it was.

Q. You walked up the hill? A. Yes, and I met the fellow with the dog, if I am not mistaken, and I asked the direction of the subway, and he told me the Third Avenue El was directly in front of me. So I walked to the El and turned left to the next street as the El station. I got in the El station and
1007 rode up to the next—I wouldn't say it was the next stop—I changed over and came back to 149th Street and Grand Concourse and got the subway. From the subway I got off at 125th Street and walked west to Eighth Avenue, and as I was going by 133rd Street and Eighth Avenue by Arthur's Bar and Grill I seen a fellow there I knew.

Q. What is his name? A. His name is Lee.

Q. What's his last name? A. I really don't know that, and I asked him will he tell my friend Adolph Clark to come to the house at once. I didn't return home. I was hurt. If he did know it, it was not to my knowledge. I went home and washed my arm.

1008 Q. What did you wash the cut with? A. Plain lukewarm water.

Q. Yes; then Adolph came in? A. Adolph came in shortly, and he asked me what happened.

Q. Did you tell him what happened? A. Yes, I told him what happened, but I didn't tell him about the killing, because I didn't know it was a killing.

Q. You didn't know the man that came from behind the partition was killed? A. Not until I saw it in the newspapers.

Q. What did you tell Adolph? A. I told him I was glad he didn't go uptown. So when we got to 135th Street, the subway, I told him I didn't want him to come because there were only two girls there.

Q. Was Adolph with you when you met this man whose name you don't give me? A. Yes.

Q. Did you show Adolph the cut on your arm? A. I did.

Q. And what did he say and what did you say then? A. I don't know the exact words, but I told him what happened, and he told me I should go to a doctor, and I thought there was a bullet left in my arm, and I went in the room and I laid on the bed. 1010

Q. Was there blood on your coat? A. Yes.

Q. Had the blood gone on any of your other clothes? A. Yes, suit coat, a grey suit. I had a grey suit and a tan camel overcoat.

Q. Was there blood on your suit and shirt? A. Yes.

Q. And blood on your coat? A. Yes.

Q. What kind of coat did you have? A. Tan camel overcoat. 1011

Q. What happened after that, after you showed him the wound and told him how you got it? A. Nothing.

Q. What did he do? A. He said he didn't have any money. So he told me to go to a hospital. So I thought the bullet was in my arm, and I got a razor, and I picked up my coat and the bullet fell out of my coat.

Q. Where was it, in your coat? A. Yes.

Q. Where did it fall out of? A. The camel hair coat.

Q. Then what happened? A. I wrapped it up with my handkerchief.

Q. You wrapped the bullet up in your handkerchief? A. No; my arm.

Q. What did you do with the bullet? A. I threw it down the toilet.

Q. Down the drain? A. At the house I was living at.

Q. What part of the house, the toilet? A. Yes.

1013

Q. In the bowl? A. In the toilet.

Q. In the toilet on your floor? A. Yes.

Q. Did you flush the toilet after that? A. Yes.

Q. What happened then? A. I stayed in the house a couple of days.

Q. Before that did you do anything to your arm that night, bandage it or anything? A. I kept changing the handkerchief. I always keep two or three dozen handkerchiefs.

Q. Did you send Adolph to get bandage? A. No.

Q. Did he bandage your arm? A. He didn't have nothing to do with it.

1014

Q. What did you do with the blood stains on your clothing, on your camel hair coat and your grey suit coat and on your shirt? A. I didn't do nothing.

Q. Did you ask Adolph to do away with it? A. No, sir.

Q. What happened to them? A. I don't see enough use of my holding up for him.

Q. Tell me what you did? A. He went down and got me bandages and borrowed some money.

Q. Who got the bandages? A. Adolph Clark.

Q. Did he come back with the bandages? A. He did the best he could. He got some sulfa drugs that he knew about and some band-aids and some peroxide.

Q. And when he came back with the peroxide and the band-aids he applied them to the cut? A. Yes, sir.

Q. What happened with your camel hair coat and your shirt? A. Adolph told me he would get rid of them for me. 1016

Q. Did he take them from your home? A. Yes.

Q. Did you ever see them again after that? A. I never laid eyes on them again.

Q. What did he say he did with them? A. He said he burned them up, and he told me to stay in the house, and after a couple of days I told him I would have to make my appearance on the street in case the detectives were looking for me. I just pretended I wasn't hurt, and practically everyone that knew me didn't know I was hurt. Lots of people hit me and I winced, and I told them 1017 I was stabbed in the arm.

Q. Who was it that pinched your arm? A. No; some fellows; I wouldn't know definitely any names.

Q. This picture that you wrote on the back. You said that you went into the liquor store on December 13th about 6:15 or 6:30. Are

you sure of the time? A. I am almost positive.

Q. Might it have been earlier than that? A. Let me see, now. No; hardly; I don't think so.

By Mr. Ryan: Mark this picture Exhibit 1.")

The Witness: And at that point I marked the picture Exhibit 1.

Q. That is the picture I showed you before? A. I marked it at that point; not at the point where you interrupted me.

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Q. But you did mark it that evening, and that was the one I showed you? A. That's right.

Mr. Foley: It is now People's Exhibit 7 in evidence, I believe. Proceed, please.

(Witness resumes reading as follows:

"Q. Will you look at this picture and tell me what that is? A. Tell you the truth I don't remember this picture. The picture I do know is the one his legs stick out.

By Mr. Ryan: We will mark this picture Exhibit 2.")

Mr. Foley: Suspend for a moment.

1020

Q. The picture concerning which Mr. Ryan questioned the witness and on which he did not write was marked by you as People's Exhibit 2 at that time in the investigation? A. It was.

Q. And do you find your exhibit mark or signature and the date on there? A. I do.

Mr. Foley: May I identify it now, Your Honor, for the record, as People's Exhibit 4 in evidence? Go ahead, Mr. Salmore.

(Witness resumes reading as follows:

"Q. Look at these pictures. A. I don't remember these pictures. I remember the two front pictures.

Q. Do you remember this as a picture of the store you went into? A. Yes.

Q. Will you write it on the back with your name? A. What do I put here?

Q. If that is the store you went in on December 13th, 1946.") 1022

The Witness: At that point the witness wrote on the picture.

(Witness resumes reading as follows:

"A. Let me see the other one and I'll see if I remember.

Q. What have you written on the back of the picture? A. I remember the store, and I signed my name.")

Mr. Foley: Now, suspend a minute, please.

Q. Did you at that time mark that picture? A. I did, sir. 1023

Q. As what? A. It was marked Exhibit 3, I believe.

Q. Exhibit 3 in our investigation, February 7, 1947? A. That is right.

Q. Do you find your mark there? A. Yes, sir.

Q. With the signature? A. My signature.

Q. And the date? A. Yes, sir.

Q. And on the back of that the defendant wrote, "I remember this store"? A. Whatever is written there he wrote.

Q. In your presence? A. In my presence; that is right.

Mr. Foley: May I identify this in our record, Your Honor, as People's Exhibit 6 in evidence, and at this time I offer the entire exhibit. Heretofore it has been in evidence only as concerned the picture on it. Now I offer the writing on the back as well.

1025 The Court: This was received, wasn't it, before?

Mr. Foley: It was received, as I recall it, Your Honor.

The Court: What exhibit is that now?

Mr. Foley: It is People's Exhibit 6 in evidence heretofore received only with respect to the picture upon the front of it.

The Court: No. I think the whole picture was received in evidence. Wasn't this one of the pictures that I said will not be shown to the jury until some future time?

Mr. Foley: It might be.

The Court: It is in evidence for all purposes.

1026 Mr. Fleischman: May I see that now, Your Honor?

The Court: Yes.

(Mr. Foley hands same to Mr. Fleischman.)

Mr. Fleischman: If Your Honor pleases, my recollection is correct. This picture was received only for the purpose of the picture itself, not as to the writing contained thereon.

Now, I object to the writing contained on this picture on the ground that it is not binding on the defendant Lester Haughton.

The Court: I have given that ruling, that all this testimony is received only as to the defendant Moore and not as to the defendant Haughton. The whole exhibit is now received in evidence and may be shown to the jury at any time.

Mr. Foley: I would like permission to show it now.

The Court: Pass it along.

(Exhibit referred to passed amongst 1028
jurors.)

Mr. Foley: That exhibit was received, Your Honor, only with respect to the picture at the time that it was offered.

The Court: The whole exhibit is received in evidence now.

Q. At that point, Mr. Salmore, did the testimony turn to another picture? A. The next I have: "I remember the store and I signed my name." Is that right, sir.

Q. That's right. A. The next was "By Mr. Ryan: We will mark that Exhibit 3." That was referring to that picture.

1029

(Witness resumes reading as follows:

"A. I will tell you what I remember about this picture. I don't remember Detective Burke lying there on the floor. I remember the counter, the partition that the boxes made or the cartons, and the bunch of bottles on the right hand side where I was standing.

Q. Will you mark that picture on the back of it?")

The Witness: And witness then signs picture and picture was marked Exhibit 4.

Q. Exhibit 4 in our investigation. Do you find your mark, Exhibit 4, together with your name and date, February 7, 1947, on that? A. I do, sir.

Mr. Foley: May I identify it for our record as People's Exhibit 3? I will not show it at this time. We will go right on with the
1031 examination. Continue, please.

(Witness resumes reading as follows:

"Q. Do you drink liquors? A. I don't use any alcohol or narcotics.

Q. Were you drinking that night at all? A. I was not.

Q. You were entirely sober? A. I knew what I was doing.

Q. What's the name of the man that was with you? A. I don't remember his name.

Q. Is that you don't remember or you don't want to tell me? A. I don't remember his name.

1032 Q. You know him as a friend? A. Not as a friend. I just know him from being around the block.

Q. Didn't you know him as a friend of Adolph? A. I know him as a friend of Adolph.

Q. You don't want to tell me his name? A. I don't know his name.")

The Witness: Statement concluded at 9:10 P. M.

Q. Later that same evening, February 7, 1947, did you return to Mr. Ryan's room in the District Attorney's office? A. I did, sir.

Q. And did you hear him there ask questions of the defendant Moore? A. I did, sir.

Q. And did Moore make responses to those questions? A. He did, sir.

Q. And did you make a stenographic record of the questions asked and the answers made? A. I did.

Q. Have you your notes here of that questioning and the answers made? A. I have.

Q. Tell us, first, at what time it was taken? A. 1034
The statement was taken at the District Attorney's office on February 7, 1947, at 11:45 P. M.

Q. Who was present throughout that questioning whose names you have recorded there as witnesses to the statement? A. Assistant District Attorney Ryan, District Attorney Foley, Assistant District Attorney Lechtman, Assistant District Attorney Delagi, Inspector Rice, Lieutenant Dinan and Detective Green, Shield No. 1749, of the Homicide Squad.

Q. Were there, in the course of that investigation, other people in and out of that room? A. There were, sir.

Q. Whose names you have not recorded here? A. That is right, sir. 1035

Q. Will you proceed now to the questions asked by Mr. Ryan and the responses made by the defendant George Moore?

Mr. Wilkinson: If the Court pleases, may I have the record indicate that defense counsel were not served with a copy of the transcribed notes and the District Attorney has

copies? I would like that noted on the record, please.

The Court: All right.

Mr. Fleischman: If Your Honor pleases, at this time I object to the statement on the ground it is not binding on the defendant Lester Haughton.

The Court: The same instructions heretofore given. This is received only as to the defendant Moore and not as to the defendant Haughton.

(Witness reads as follows:

1037 "Q. Now, Moore, before, around a quarter to nine, you made a statement to me that was taken down in stenographic notes by Mr. Salmore, this gentleman here. A. Yes.

Q. Is that correct? A. Yes.

Q. That statement was typewritten? A. Right.

Q. What did you do with the statement after it was typewritten? A. I signed it.

Q. Did you read it? A. I read it thoroughly.

Q. Did you make all the corrections that you wanted to make? A. Yes.

Q. And you signed at the bottom of each

1038 page? A. Yes.

Q. That was a voluntary statement made by you? A. Every one of them.

Q. And the statement you are now making is voluntary? A. Strictly.

Q. And neither I nor anybody else has made any promises to you? A. No, sir.

Q. You have not been mistreated in any way? A. That is correct.

Q. Since you have signed the statement you told me that you want to make some, a few additional changes. A. Yes.

Q. What do you want to change? A. That I am the one. That I had the gun; that no one else but me had a gun, and I did the shooting.

Q. Did you fire the shots that killed Detective Burke? A. I am the one.

Q. How many bullets did you fire? A. I fired all the shots, five or six. I didn't look in the magazine.

Q. Did you have the gun when you came 1040
from Harlem? A. I did.

Q. You brought it with you to the Bronx? A. Yes.

Q. Was that story that you told me about seeing some girls true? A. Yes, that was true.

Q. Why did you bring the gun to the Bronx? A. I had the gun in my pocket when I was supposed to do something else; what, I don't know. That was the 13th, and I wasn't for it, and he said, 'I am going to the Bronx for a girl,' and he told me two girls, and I told him I would go with him. I had the gun. I wouldn't say I wasn't thinking about the gun, and when we got there he made the sug- 1041
gestion that we stick up Ray's liquor store.

Q. Whose gun was it? A. The gun didn't belong to me. It belongs to another boy.

Q. What's the name of the boy it belongs to? A. Mack.

Q. Do you know his full name? A. No, I don't.

Q. Do you know where he lives? A. No, I don't know the number or nothing like that.

Q. When had you secured the gun from Mack? A. Before he went to work, at three o'clock.

Q. In the afternoon of December 13, 1946? A. Yes.

Q. After you came out of the store you had the gun? A. Correct.

Q. And did you have the gun as you went down in the El train and in the subway to Harlem? A. No.

1043 Q. What happened to it? A. I gave it to him on the bridge.")

Mr. Foley: Will you please complete the last answer? There was some noise, and I didn't quite hear it.

The Witness: "I gave it to him on the bridge."

(Witness resumes reading as follows:

"Q. Who did you give it to? A. Ray.

Q. When you speak of Raymond, is this Raymond?

By Mr. Ryan: Showing witness a picture of Raymond Haughton.

A. That's him."

1044 Mr. Foley: Let me interrupt you here, Mr. Salmore.

Q. Have you seen that picture that was shown to the defendant Moore at that time? A. I have.

Q. Whose picture is it? A. It is a picture of the defendart Lester Haughton.

Mr. McDonough: I object, if Your Honor pleases. I don't see that the picture is here. It is not in evidence.

Mr. Foley: I will offer it.

Q. Mr. Salmore, did you mark the picture at the time there was a discussion? A. I did.

Q. Will you refer to this picture, and see whether or not you find on it the marks that you made? A. They are there.

Mr. Fleischman: I object, if Your Honor pleases, to any testimony regarding any marks that the stenographer made on an alleged picture. 1046

The Court: Sustained.

Q. Is this the picture that was shown to you on that occasion? A. It is.

Q. And is it a picture of the defendant Haughton?

Mr. Fleischman: I object, Your Honor.

The Court: Sustained.

Mr. Foley: I will ask to have it marked for identification.

The Court: Have it marked.

(The picture referred to received and marked People's Exhibit C for Identification of this date.) 1047

The Court: The jury is instructed to disregard anything that was said with respect to the picture.

Q. Will you please read the last question that you read, and then proceed to the answer without

comment as to any notation that is made there; merely the question and answer? A. "When you speak of Raymond," you mean?

Q. That's right.

The Witness (reading: "When you speak of Raymond, is this Raymond?

By Mr. Ryan: Showing witness——")

Mr. Foley: No. Don't read the comment. There has been an objection interposed here.

The Witness: That's the direct words of Mr. Ryan.

1049 Mr. Foley: But there is a conclusion contained in it there that has been objected to here. I don't want it in in that way. All right, proceed and read it all, and let it be subject to objection.

The Court: Let me see it. (Paper handed to the Court.)

Just read the question asked by Mr. Ryan and answer made by the defendant, and then go to the next question asked by Mr. Ryan and the answer. Do you understand?

The Witness: No, I really don't. May I speak to you, sir?

The Court: No. I am telling you now, just read the question asked by Mr. Ryan

1050 and the answer. Then skip whatever you have there with respect to Mr. Ryan, and go to the next question and answer.

The Witness: I see.

The Court: Is that clear?

The Witness: Yes, sir.

(Witness resumes reading as follows:

"Q. When you spoke of Raymond, is this Raymond? A. That's him.

Q. Would you mark on the back that this is Raymond's picture and put your name on the back? A. I would rather not mark it.")

The Court: Now, at that time was the defendant Moore shown a picture?

The Witness: He was, sir.

The Court: Now go to the next question and answer.

Q. The picture that was shown His Honor, is that the one which was marked by the stenographer for identification? A. It was.

Q. And is that the one which I have submitted here and which is now People's Exhibit C for 1052
Identification? A. It was.

Mr. Foley: All right, now; you may proceed.

The Witness: Shall I leave out the next question by Mr. Ryan? Is that omitted, Mr. Foley?

Mr. Foley: His statement; yes. Just go to the question.

Mr. Wilkinson: I would like to see it.

Mr. Foley: Come and look at it. You may see it, counsel.

(Defense counsel look at statement.)

The Court: The Court instructs the wit- 1053
ness to read the next question asked by Mr. Ryan and the answer.

Mr. Foley: That's right.

(Witness resumes reading as follows:

"Q. Where was it you said you gave Ray the gun? A. On the bridge.

Q. On the bridge over the railroad tracks that you told me about before? A. Correct.

Q. What did you say to him when you told him to take the gun? A. That he should take the gun. I had small pockets.

Q. What type of gun was it? A. Army .45.

Q. Automatic? A. Yes.

Q. Had you looked in the magazine after you came out of the store and after you gave him the gun? A. No, sir.

Q. What did you do with the gun after you gave it to Ray? A. I forgot about the gun until I seen Adolph. I didn't tell Adolph to get the gun. I told Ray to get rid of the
1055 gun and Adolph got rid of it.

Q. How did you know if Adolph got rid of it? A. I asked him, and he said he gave it back to Mack.

Q. When did he tell you that? A. The next day or the day after.

Q. You mean the day after the shooting? A. Yes.

Q. December 14, 1946? A. Yes.

Q. Did you ever see Mack after that to see if he secured the gun from Adolph? A. I seen him a week later.

Q. Did you talk about the gun? A. I told him it was hot and to get rid of it.

Q. What did Mack say? A. He said it was
1056 a souvenier and he didn't want his wife to find out; he didn't want his wife to find out I did that with it.

Q. Did you tell him what you had done with the gun? A. Yes, I told him the gun was hot and a man was killed with the gun.

Q. Did you tell him what man? A. I told him to get rid of the gun as soon as possible

because it was hot. I said, 'If you get caught in a fight they would take the gun, and the detectives from Ballistics could tell where the detective was killed with it.'

Q. Did he tell you what he did with it? A. He said he was forced to get rid of the gun.

Q. Did you see him later on to find out what he did with the gun? A. He said everything was all right with the gun.

Q. Is there any other notation you want to make? A. No, sir; everything else is correct, sir.")

The Witness: Statement concluded at 11:55 P. M. 1058

Q. Now, Mr. Salmore, did you later on in the early morning of February 8, 1947 take another statement in Mr. Ryan's room? A. I did.

Q. Who asked the questions? A. Mr. Ryan.

Q. And who answered them? A. Lester Haughton.

Q. The defendant here? A. Yes, sir.

Q. At what time was that statement taken? A. The statement was taken at 3:00 o'clock in the morning.

Q. Whom have you recorded as being present as witnesses throughout the statement? A. Assistant District Attorney Ryan, Assistant District 1059 Attorney Lechtman, Detective Holt, Shield No. 763 of the 48th Squad, Detective Green, Shield No. 1749, of the Bronx Homicide Squad, myself and George C. Moore.

Q. George C. Moore, is that the other defendant here? A. It is.

Q. Did you make stenographic minutes of the questions asked and answers made? A. I did.

1060 *Arthur Salmore—For People—Direct.*

Q. And have you your original notes here with you? A. I have, sir.

Q. Will you read the record, please, of the questions asked and the answers made?

Mr. Fleschiman: If Your Honor pleases, at this time I object to the introduction of this statement in evidence on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Fleischman: Exception.

The Court: This is received now as to the
1061 defendant Lester Haughton, and is only binding as to him, and is not received as to the other defendant, Moore.

Proceed.

(Witness then reads as follows:

"Q. What is your name? A. Lester Haughton.

Q. Where do you live? A. 741 Jennings Street.

Q. How long have you lived there? A. Since May.

Q. How long have you lived in the Bronx? A. Since May.

Q. When you say May, you mean May of
1062 1946? A. 1946.

Q. Did you come up to the Bronx on the evening of Friday, December 13, 1946? A. Yes, I did.

Q. Who did you come up to the Bronx with? A. Stack.

Q. By Stack you mean this man seated here alongside of you, George Moore? A. That's him.

Q. Is he known by the nickname Stack? A. Yes, sir.

Q. Where had you met Stack? A. 135th Street and Eighth Avenue.

Q. West 135th Street and Eighth Avenue in New York City? A. Yes.

Q. About what time had you met him that day? A. I don't remember.

Q. Well, what is your best recollection? A. About four o'clock in the afternoon.

Q. And did you meet anybody else down in Harlem when you were with Stack before you came to the Bronx? A. No, I didn't. 1064

Q. Do you know anybody by the name of Adolph Clark? A. Yes, I do.

Q. Had you met Adolph Clark while you were with Stack? A. Oh, yes.

Q. Where had you and Stack met Adolph? A. 35th Street.

Q. The three of you met together? A. Yes.

Q. Was it by appointment? A. No, we always seen one another around there.

Q. Now, did Adolph Clark come up with you and Stack to the Bronx? A. No, he didn't.

Q. What happened to Adolph Clark? A. Nothing. He just didn't come; that's all. 1065

Q. He stayed down in New York? A. Yes, he did.

Q. And when you met Stack did he have any gun with him? A. Yes, he did.

Q. What kind of gun did he have? A. .45 automatic.

Q. And is this the gun that he had with him, showing witness gun marked W. F. 2/8/47? A. It looks like the gun.")

Mr. Foley: Now, let me interrupt you, Mr. Salmore.

Q. While you were taking that statement the gun was shown to the defendant Haughton. A. That is right.

Q. I ask you to examine this gun, which is People's Exhibit 12 in evidence, and tell me whether or not you can say that is the gun which
1067 was shown to him at that ime? A. Yes, sir; that is the gun.

Mr. Foley: Thank you. Will you proceed with the questions and answers?

(Witness resumes reading as follows:

"By Mr. Ryan: Marked U. S. Property No. 772125.

Q. And how did you know he had this gun with him when you met him in Harlem? A. He told me he had it.

Q. Did he show you the gun? A. No.

Q. Why did you and Stack come up to the Bronx? A. To try and make some money.

1068 Q. How would you and Stack make some money? A. Stick-ups.

Q. And when you left downtown, did you have any particular place in mind that you were going to stick up? A. We had this place, and if the store was crowded we would stick up some other place.

Q. What liquor store was that? A. Ray's liquor store.

Q. Where is that? A. On Webster Avenue.

Q. Near what street? A. I don't know.

Q. Did you know that store before you came up to the Bronx on December 13, 1946? A. I had seen it before, but I was never inside of it.

Q. Now, how did you and Stack come up from downtown to the Bronx? A. In the subway.

Q. Where did you get off the subway? A. 170th Street.

Q. 170th Street? A. Yes.

Q. And Jerome Avenue? A. Where the 1070
Eighth Avenue subway stops.

Q. How did you go there after you got off the subway? A. We walked east.

Q. To where? A. Over to where we hit Webster Avenue.

Q. And then? A. Down the same street you come out from the subway.

Q. Yes. A. We walked down that way and we came to a lot of steps like, and we walked down there.

Q. The steps led you down to Webster Avenue? A. Down to Webster Avenue.

Q. Then what did you do? A. We walked until we saw the store.

Q. Did you lead the way? A. Yes; I knew 1071
where the store was.

Q. When you reached the store, did you and Stack have any agreement or plan as to what you would do in the store? A. No.

Q. Did you talk over what each one was to do? A. No, we didn't.

Q. What happened after you reached the store? A. We went in.

Q. And I show you this picture which has been marked Exhibit 1, which has on the back 'George Moore, February 7, 1947,' and the words, 'I entered this liquor store on December 13, 1946, at 6:15 or 6:30 o'clock,' and I ask you if that is the picture of the outside of the store that you went in? A. Yes, that is it.

Q. Will you write your name on the back of the picture where George has written?")

The Witness: At this point Mr. Ryan handed the witness the picture.)

1073 (Witness resumes reading as follows:

"If you want to you can write anything you want on there. (Witness writes on photograph)

Q. You wrote the words, 'This is the store'? A. Yes.

Q. Will you sign your name underneath that, all on Stenographer's Exhibit 1? Now, I see you wrote your name, Lester Haughton. Is that your name? A. Yes, that is my name.

Q. Are you also known as Raymond? A. Yes, sir.

Q. But your correct name is Lester? A.
1074 Yes, sir.")

Mr. Foley: Now, just a minute, please.

Q. Is this People's Exhibit in evidence the picture that was handed to the defendant Haughton and on which he wrote in your presence? A. That is right.

Mr. Foley: Now, if Your Honor please, it is my recollection that People's Exhibit 7

in evidence, when originally offered, was only concerning the picture upon its face, and it is now offered with respect to the writing on the back by both defendants, the entire picture, as an exhibit in evidence.

The Court: The whole exhibit is received in evidence.

Mr. Foley: Please proceed.

(Witness resumes reading as follows:

"Q. After you got to Ray's liquor store on Webster Avenue on December 13, 1946, did you and Stack go in there? A. Yes, we did.

Q. Who went in first? A. I don't know who went in first. 1076

Q. But you both went in? A. Yes.

Q. Tell me what happened after you and Stack went in the store? A. We went in the store and said, 'This is a stickup.'

Q. Who said that? A. Stack said it.

Q. Who did he say that to? A. The storekeeper.

Q. Where was he? A. Behind the counter, the front of the counter, somewhere; I don't know.

Q. After he said that, what happened? A. The detective in the back pulled out his pistol.

Q. Where did the detective come from? A. 1077
Back of the store behind the cases.

Q. And did you know the detective? A. No, I didn't.

Q. Was he a small man or a big man? A. He looked to be a large man.

Q. And what happened after the detective stepped from behind the cases? A. I don't

know. I just ducked behind the counter. I saw a pistol and I ducked behind the counter.

Q. Did Stack have a gun in his hand when you went in the store? A. Yes, he did.

Q. What happened then when you ducked behind the counter? A. I just heard some shots. I didn't see what happened.

Q. How many shots did you hear? A. A bunch of them. I didn't count them.

Q.-And then what happened? A. Then we was outside again.

Q. You went outside of the store? A. Yes.

1079 Q. What happened to Stack? A. He was outside, too; both of us was outside.

Q. Did you get hit with any of the bullets? A. I had a cut, maybe it was a bullet or a piece of glass.

Q. Where on your eye was the cut? A. Right here.

Q. Indicating his right eyebrow. No; witness corrects me. It is below the right eyebrow and on the very upper part of the eyelid. Were you bleeding there from your right eye? A. Yes, a little.

Q. Well, how did you get cut there? A. I don't know; just found out I was cut.

1080 Q. You mentioned it might have been a piece of glass? A. Could have been.

Q. How would that happen? A. The glass was flying.

Q. Where did the glass fly from? A. Off the counter.

Q. From bottles that were broken by bullets? A. Yes.

Q. Then what happened when you got out of the store? A. We went over, we ran around the corner somewhere.

Q. Were you leading the way? A. No; I was just running. I didn't know much about it up there. I don't know much about the Bronx. I was trying to get away; that's all.

Q. Where did you run to? A. Around some corner. I don't know the street. I don't know where it was.

Q. Then where did you go? A. Went over a bridge. I remember that.

Q. A foot bridge? A. One of those where the train runs underneath it.

Q. Over the New York Central tracks at Park Avenue? A. I believe so; yes.

1082

Q. When you went over the bridge, did you catch up with Stack? A. Yes.

Q. And did Stack catch up with you? A. We were running mostly together all the way.

Q. Did Stack say anything to you? A. If he did I didn't hear him.

Q. After you crossed the bridge over the New York Central Railroad tracks, where did you go? A. Where did I go?

Q. Yes. A. I went downtown.

Q. Did you go to a school-yard before you went downtown? A. Yes; we stopped in some school-yard.

1083

Q. Did you get the gun from Stack at any time while you were running away from the store? A. Yes, I did.

Q. Where was that that he handed you the gun? A. I don't know; maybe it was in the school-yard.

Q. After you came out of the school-yard, where did you go? A. I went downtown.

Q. How did you go downtown? A. Caught the train downtown.

Q. What train? A. Eighth Avenue subway.

Q. Where did you get that? A. First I got the crosstown trolley car, and then I went and caught the Eighth Avenue subway.

Q. What crosstown trolley did you take? A. 167th Street Crosstown.

Q. And you came to the Concourse? A. Yes.

Q. And you took the subway downtown? A. Yes.

1085

Q. Did Stack come along with you as you went on the trolley car? A. No, sir.

Q. You separated? A. Yes.

Q. Where had you separated? A. Somewhere when we were running.

Q. When you came down on the crosstown trolley car you had the gun? A. Yes.

Q. Where did you have the gun? A. In my pocket.

Q. Which pocket? A. Either one of them; the right or left.

Q. Did you have an overcoat on? A. Yes.

Q. Did you have it in your overcoat pocket? A. Yes.

1086

Q. Where did you get off the subway? A. 135th Street.

Q. Then what did you do? A. Then what did I do?

Q. Yes. A. Nothing. I just waited around until I saw Adolph.

Q. Adolph Clark? A. Adolph Clark. I gave him the automatic.

Q. When did you meet Adolph Clark, about? A. I don't know. A couple of hours later; ten or eleven o'clock; something around there.

Q. Did you say anything to Adolph Clark when you gave him the pistol? A. Did I say anything to him?

Q. Yes. A. I told him to hold it.

Q. Say anything else to him? A. Told him that things got messed up and there was some shooting, and here is the pistol.

Q. And when did you see Stack again after that? A. I saw him the next day. 1088

Q. And where did you see him? A. At his home.

Q. Did he have anything the matter with him then? A. Yes, sir; he had an arm wound.

Q. Did you see where he had been shot in the arm? A. Yes; I saw it.

Q. Did you discuss with Stack that time about changing your clothes and destroying the clothes? A. Yes, he did.

Q. What was that talk? A. He told me to take them off.

Q. He tell you why you should take off your clothes? A. He told me to take them off because maybe somebody saw us.

Q. What did you say to him? A. I told him I didn't have no more to take off; no more to put on. 1089

Q. Is there anything else you want to tell me about what happened on December 13, 1946? A. No, sir.

Q. About any other matter? A. No, sir.

Q. This statement that you made to me is entirely voluntarily on your part? A. Yes, sir.

Q. I have made you no promises of any kind? A. No, you haven't.

Q. And you have been treated well since you have come to the District Attorney's office? A. Since I have been here; yes.

Q. And nobody has threatened you or harmed you in any way? A. Nobody has.

Q. Is what you told me the truth? A. Yes, it is.")

The Witness: Statement concluded at 3:23 A. M.

1091 Q. Mr. Salmore, your testimony here this morning contains three separate statements, is that correct? A. That is correct.

Q. One taken from the defendant Moore beginning at 8:42 P. M., another from Moore beginning at 11:45 P. M. and one from the defendant Haughton beginning at three A. M., is that correct? A. That is correct.

The Court: Two statements were on what date?

Q. Those taken in the P. M.— A. Those in the P. M. were on February 7th. The A. M. statement was on February 8th.

1092

The Court: That was the next morning.

The Witness: That was the next morning.

Q. You have testified the first statement from the defendant Moore began at 8:42 P. M. and concluded at 9:10 P. M. A. Correct.

Q. As soon as you had finished recording the questions asked and the answers made, did you

go immediately to the stenographers' room in the District Attorney's office?

Mr. Fleischman: I object to Mr. Foley leading the witness, characterizing what he did.

The Court: What did you do?

The Witness: I did, I went to the stenographers' room of the district attorney's office.

Q. Did you proceed to transcribe the notes you had taken? A. I did.

Q. What did you do with them page by page as they were transcribed? A. As I finished each page, a detective or some one took it up to Mr. Ryan. 1094

Q. As soon as you had finished them? A. Yes.

Q. Did you turn out your notes as fast as you could? A. As rapidly as I could, sir.

Q. Since the date on which you took that first statement, have you transcribed a true, accurate and complete copy of the statement? A. I have.

Q. I show you now what purports to be, or let me show you a record of the questions and answers, can you tell me whether or not that is the cop you turned out that night of February 7th and sent up to Mr. Ryan sheet by sheet as you finished them? A. It is. 1095

Mr. Foley: I would like to have it marked for identification at this time.

The Court: Mark it.

(Same marked People's Ex. D for identification of this date.)

Q. This statement, People's Ex. D for identification is the one you turned off the machine and sent up to Mr. Ryan that night? A. It is.

Q. You have also turned out a true, accurate and complete transcription of the statement you took from Moore on that evening, beginning at 8:42 P. M. A. I did.

Q. Have you compared this statement, People's Ex. D for identification with the true and accurate and complete transcription you made? A. I have.

Q. Have you found certain discrepancies between People's Ex. D for identification and the
1097 true and accurate copy you made? A. I have.

Q. Were there any questions omitted? A. No, sir.

Q. Were there any answers omitted? A. No, sir.

Q. Have you prepared a list of the differences between the true and accurate transcription you made and the one marked People's Ex. D for identification? A. I have.

Q. Have you your list of differences there? A. I have.

Mr. Fleischman: I object to this line of questioning—Mr. Foley's characterizing it for
1098 the witness.

The Court: Objection sustained. It is confusing.

Q. Have you compared People's Ex. D for identification with the true and accurate transcript of the notes you took? A. I have.

Q. Are their discrepancies or differences between People's Ex. D for identification and the true and accurate transcript of those minutes?

Mr. Fleischman: I object to this line of examination; it is not relevant.

The Court: I will sustain the objection.

Mr. Foley: Very well.

Q. Have you seen this transcript of questions and answers before? A. Yes, sir.

Q. When did you turn that out? A. I turned that out on February 7th, 1947, after I finished taking the statement to Mr. Ryan.

Q. In that statement Mr. Ryan directed his questions to the defendant Moore? A. That is correct.

1100

Q. Did you turn this out——

The Court: When you say "turn out," do you mean "transcribed"?

Mr. Foley: Thank you, yes.

Q. Did you transcribe this I now hold in my hand under the same circumstances as you did People's Ex. D for identification? A. I did.

Mr. Fleischman: I object to that question.

The Court: Objection overruled.

Mr. Fleischman: Exception.

Q. As you turned it out, what did you do with it? A. As I turned out each page, a detective or somebody else took each page to Mr. Ryan. 1101

Mr. Wilkinson: I object to where the detective took it. That is without the witness's knowledge.

The Court: Did you send it to Mr. Ryan by somebody in your office?

The Witness: I did.

The Court: Proceed.

Mr. Foley: May I have it marked for identification?

The Court: You may.

(Same marked People's Ex. E for identification of this date.)

Q. This, Mr. Salmore, is a transcript of the minutes of the second statement from Moore? A. It is.

Q. Since that night have you made a true and
1103 accurate transcript of your notes? A. I have.

Q. And have you compared People's Ex. E with the true and accurate transcript you made? A. I have.

Q. Are there any questions in the true and accurate transcript that were omitted from People's Ex. E for identification? A. There are not.

Mr. Fleischman: The same objection.

The Court: The same ruling.

Mr. Foley: All right.

Q. Look at this and tell me whether you have seen it before? A. Yes, this is a copy of statement transcribed after taking the statement from
1104 Mr. Ryan of Lester Haughton.

Q. That was on the morning of February 8th? A. It was.

Mr. Foley: I ask that it be marked for identification.

The Court: Mark it.

(Same marked People's Ex. F for identification of this date.)

Q. This People's Ex. F for identification contains a record of all the questions that were asked of Haughton? A. It does.

Q. All the answers that were made by him? A. It does.

Mr. Foley: That is all. May I have one more question?

The Court: Yes.

Q. Mr. Salmore, was People's Ex. F for identification transcribed under the same conditions and circumstances as People's Exs. E and D for identification? A. It was sent, each page as I transcribed it by a detective to—— 1106

Mr. Fleischman: If your Honor please, objected to.

The Court: The same ruling.

Q. At the time you sent these three exhibits for identification, D, E and F, from your office to Mr. Ryan, were there any pen and ink writings on any of them? A. There was nothing, sir.

Mr. Foley: That is all.

Cross-examination by Mr. Wilkinson. 1107

Q. Mr. Salmore, what you have testified to from your notebook there is what is in those statements? A. That is correct.

Q. So that you have already testified to the complete testimony that would be found in those statements, is that correct? A. That is correct, yes.

Q. You say you first saw the defendant on February 7th, George Moore, about 8:42 P. M. A. That is right.

Q. That was the first time that you had seen George Moore? A. The first time I ever saw him.

Q. You did not see him in the district attorney's office about five o'clock? A. I never saw him before 8:42.

Q. You don't know where he was at six or 7 o'clock? A. I don't know.

Q. Or until 8:42 you had no idea where he was? A. I had no idea.

1109 Q. When you first came in to take the statement, will you tell us who sent for you? A. Mr. Ryan sent for me.

Q. Where did you take the first statement? A. In the office of Chief Assistant Ryan.

Q. Mr. Ryan's office? A. Mr. Ryan's office.

Q. Who was present when you took the first statement? A. The appearances are on there. Do you want me to read them?

Q. Yes, will you tell us who was present? A. Assistant District Attorney Ryan, Assistant District Attorney Lechtman, Lieutenant Dinan, detective Green, the defendant and myself.

Q. Is there a table in that room? A. There is a desk and several tables.

1110 Q. Where were you seated or standing? A. I was seated alongside of Mr. Ryan's desk.

Q. Were there any other persons in there while Mr. Ryan was questioning the defendant, George Moore? A. At the time I began the statement, we began with the people noted.

Q. Have you any notation as to what persons were there when you concluded it? A. No, I haven't.

Q. That you concluded at what time, 9:10? A. 9:10 P. M.

Q. You don't know how many persons were present at 9:10? A. I don't know, sir.

Q. Is it customary for you to just put the number of people who were there at the start of the testimony? A. Yes, sir.

Q. If other persons come in and remain in there, you do not put them down at all? A. I have no opportunity to do so during the questioning.

Q. Was the questioning continuous? A. It was.

1112

Q. From 8:42 to 9:10? A. It was.

Q. Were there any interruptions at all? A. There were none.

Q. Did any one leave the room? A. I don't know.

Q. Were you in a position to see the doorway to this office? A. I was. However, my back was turned to it.

Q. Your back was to the door? A. My back was to the door. I was facing Mr. Ryan and the defendant.

Q. Was the defendant on your right or left? A. The defendant was to my right. Mr. Ryan on my left.

1113

Q. Was the defendant seated? A. He was.

Q. Was any one standing near him? A. Nobody.

Q. Was any one seated near him? A. Other men—people seated in the room. Assistant district attorneys were seated there. In fact, everybody was seated to the best of my recollection.

Q. This is all you listed? A. That were seated as at the beginning of the statement.

Q. Do you know Mr. Richard Shaw? A. I do not know him.

Q. Did you see Mr. Shaw in the room that night while you were taking the statement? A. I don't know Mr. Shaw.

Q. Did you take any statements from Mr. Shaw? A. I never saw or met Mr. Shaw.

Q. Have you taken statements from others other than the defendants, Moore and Haughton, in connection with this case? A. I took one statement, a statement by another witness.

Q. Did you take a statement of any of the per-
1115 sons who had been in the Bronx County jail? A. No, sir.

Q. In connection with this case? A. No, sir.

Q. Was there another stenographer from your office used on that investigation? A. There were several stenographers used.

Q. In connection with this case? A. In connection with this case.

Q. You were used to take the statements of Moore and Haughton only? A. And I believe one other witness.

Q. Do you know of your own knowledge whether statements were taken from others? A. There were.

Q. Were there statements taken prior to Feb-
1116 ruary 7th from others who were charged with this crime that you know of? A. I don't exactly recollect when they were taken. Statements were being taken all the time during the course of the investigation.

Q. Did you take any of them? A. No, sir.

Mr. Foley: I want to object to the form of the statement which incorporates some-

body was charged with this crime prior to February 7th.

The Court: Yes, but it has been asked and answered: Use the word "investigation" instead of "charge."

Mr. Wilkinson: I do not know anything about "investigation."

The Court: I am instructing you to use the word "investigation" instead of "charge."

Mr. Wilkinson: I respectfully submit——

The Court: All right. You have heard the ruling and instructions—follow them.

1118

Q. You have identified certain pictures that you had before you in court this morning, is that right? A. That is right.

Q. You have stated according to your testimony, Mr. Ryan directed him either to sign it or put something on the back—do I recollect your testimony correctly? A. May I have the question again?

(Pending question read by the stenographer as follows: "You have stated according to your testimony, Mr. Ryan directed him either to sign it or put something on the back—do I recollect your testimony correctly?")

1119

Mr. Foley: The question is objected to.

The Court: Objection sustained. You may ask it directly.

Q. I direct your attention to your notes——

The Court: I am not stopping you pursuing that particular question, but ask it properly.

Mr. Wilkinson: I think we should be permitted to pursue the question because I recollect the testimony——

The Court: That is what I am saying. I am not stopping you pursuing the question, but do it properly.

Mr. Wilkinson: May I have the question repeated again?

(Pending question again repeated by the stenographer.)

Mr. Foley: My objection is directed to the form of the question in which counsel used
1121 the word "directed" the witness.

The Court: That was my understanding.

Q. Will you refer back to your notes, the beginning of the notes, where the first photograph was exhibited to George Moore by Mr. Ryan? A. Yes, sir.

Q. Was there a question asked by George Moore, "What should I write?" A. That's right.

Q. Did George Moore ask that question of Mr. Moore? A. He did.

Q. What did Mr. Ryan direct him to do?

Mr. Foley: I object.

Mr. Wilkinson: According to the testi-
1122 mony——

Mr. Foley: May we have it read?

The Court: Read it.

The Witness: "Q. Would you write that on the back of it? A. What should I write? Q. Is that the place you robbed? A. I will write my name."

The Court: Proceed.

Mr. Wilkinson: We do not have the statement. That is why it is difficult to follow it.

The Court: I haven't any statement either.

Q. In your record there, George More asked Mr. Ryan, "What should I write?" is that correct? A. That is correct.

Q. Will you refer to your second photograph, Ex. 2——

The Court: You are asking him about the exhibit which he marked?

Mr. Wilkinson: His Ex. 2, yes, sir. 1124

The Witness: Yes, sir.

Q. Directing your attention to the request by Mr. Ryan for George Moore to write something on that photograph— A. Yes.

Q. —will you read that question or direction or whatever it is?

Mr. Fleischman: I object to it at this time, if your Honor please, on the ground that you already ruled on this line of examination in regard to that photograph.

The Court: I don't understand.

Mr. Fleischman: Maybe I don't understand. 1125

(Mr. Fleischman confers with Mr. Wilkinson.)

Mr. Fleischman: I withdraw the objection, your Honor.

(The following question was repeated by the stenographer: "Will you read that question or direction or whatever it is?")

The Court: You want him to read——

Mr. Wilkinson: With respect to that photograph.

The Witness: I think I understand. (Reading) "Q. Will you write it on the back with your name? A. What do I put here?"

Q. What was that? A. "A. What do I put here?"

Q. Proceed.

Mr. Foley: Can we have that identified, so that I may go back to it if I wish? Has it
1127 been marked?

Mr. Wilkinson: I haven't anything to identify it at all, just my own notes.

Mr. Foley: The pictures are in evidence. I would like to know the exhibit number.

Mr. Wilkinson: Exhibit 2, as I understand.

The Court: No. If you let me clear it up, I have it in mind and I will clear it up. Mr. Wilkinson asked the witness to refer to his minutes in the case at the point where he marked a certain exhibit No. 2 while he was taking the statement from the defendant, is that correct?

1128 Mr. Wilkinson: Yes, sir.

The Court: What exhibit is it in this case? What is the number in this case that refers to?

Mr. Foley: Mr. Salmore's "2" is People's Ex. 2, upon which nothing is written.

The Court: Proceed.

Mr. Wilkinson: Do you have an Ex. 2 there?

Mr. Foley: There it is. (Indicating.)

The Witness: I am sorry, counsel, I made a mistake, there is nothing on Ex. 2. I skipped a page.

Q. The page that you have is the one I want. A. The question I read on that page referred to Ex. 3.

Q. That is the one I want then. A. I am sorry.

Q. On Ex. 3 do you have questions there wherein Mr. Ryan——

The Court: You are referring to a paper which he marked Ex. 3 in the investigation; 1130
that refers to what exhibit in this case?

Mr. Foley: People's Ex. 6, your Honor.

Mr. Wilkinson: Will your Honor give us a moment?

The Court: Yes. (Court speaks to witness) I was just inquiring. I forget the witness has been on the stand from 11 o'clock. But he says he is still fresh.

Mr. Wilkinson: I hope he is not too fresh.

The Court: That depends. Proceed.

Q. Referring to your Exhibit three, which is People's Ex. 6—refer to that please in your notes where Mr. Ryan directed George Moore's atten- 1131
tion to this photograph—do you have that place? A. Yes, I have it, sir.

Q. Will you give us the question and answer or the direction by Mr. Ryan as to placing something on this photograph?

Mr. Foley: I will object, if your Honor please. As we amended our procedure as

the witness read from his notes, there were no directions incorporated in the testimony; there is nothing but question and answer.

The Court: That is right.

Mr. Wilkinson: There may be a question which has a direction in it.

The Court: Wait a minute. What do you want?

Mr. Wilkinson: I want to find out the exact words that Mr. Ryan used to have my client to put in an inscription on this picture.

1133 The Court: Let me see it. (Exhibit handed to the Court.)

Mr. Wilkinson: This is cross-examination.

The Court: But I have to know what you are doing.

Mr. Wilkinson: I am explaining it to you.

The Court: Sometimes it is not clear. Proceed.

The Witness: "Q. Will you write it on the back with your name? A. What do I put here?"

The Court: Proceed.

The Witness: "Q. If that is the store you went in on December 13th, 1946?"

Mr. Wilkinson: Proceed.

1134 The Witness: The witness writes on the picture.

Q. Read the questions before that with respect to this photograph. A. "Q. Look at these pictures. A. I don't remember these pictures. I remember the two front pictures. Q. Do you remember this as a picture of the store you went into? A. Yes."

Q. How many pictures in all were shown to George Moore between the hours of 8:42 and 9:10? A. There were several. I didn't count them.

Q. Did anyone else question George Moore? A. No, sir.

Q. At any time other than Mr. Ryan? A. No, sir.

Q. At 9:10 you completed the first statement, is that correct? A. That is correct.

Q. Then did you leave Mr. Ryan's office? A. I did.

Q. What time did you return to Mr. Ryan's office? A. The next time I returned was at the 1136
start of the next statement at 11:45 P. M.

Q. Do you know where the defendant, George Moore, was between 9:10 and 11:45, of your own knowledge? A. I do not.

Q. Did you see George Moore between 9:10 and 11:45 P. M. that evening? A. No, sir.

Q. When you returned at 11:45, was he seated in Mr. Ryan's office? A. He was.

Q. Was Mr. Shaw there? A. I don't know Mr. Shaw.

Q. Did you meet Mr. Clark? A. No, sir.

Q. Did you meet Mr. Brown? A. No, sir.

Q. Did you meet Mr. Banks? A. No, sir.

Q. Did you meet Mr. Askew? A. No, sir.

Q. From whom did you take the other state- 1137
ment, the other witness? A. Mr. Delagi.

Q. You took a statement from Mr. Delagi? A. I took a statement of a witness who was questioned by Mr. Delagi—I am sorry, sir.

Q. What was that witness' name? A. Luella Wright.

Q. Luella? A. Wright.

Q. Wright? A. Wright. I will refer to the original note—Luella Wright.

Q. Was she also known as Luella Brown? A. I don't know—she was living with somebody known as "Brown."

Q. Where did you take the statement from Luella? A. In Mr. Delagi's office.

Q. When was that? A. May I refer to my notes?

Q. Yes. A. 8 o'clock.

Q. Also on February 8th? A. February 7th.

Q. The 7th rather. A. Yes.

1139 Q. At 8 P. M.? A. 8 P. M.

Q. That is a short time before taking the statement from Moore? A. That is correct.

Q. Was Luella a material witness there at the time? A. I don't know, sir.

Q. You heard something about it, did you not? A. I believe she was.

Mr. Foley: Objected to as hearsay.

The Court: Objection sustained.

Q. From her particular statement, according to her statement, was she in jail at the time? A. To my knowledge when she was in the district attorney's a statement was taken from her.

1140 Q. That was a statement relative to this case? A. Yes, sir.

Q. Who sent for you to take the second statement? A. You mean the one at 11:45 P. M.?

Q. That's right. A. Mr. Ryan.

Q. That was a ten minute statement? A. A short statement, yes, sir.

Mr. Wilkinson: Excuse me a minute.

The Court: Yes.

(Mr. Wilkinson confers with associates.)

The Court: Gentlemen of the jury, you are admonished by the court not to discuss the case. Form no opinion in the case as to the innocence or guilt of the defendants until the matter is submitted to you by me. Step upstairs and wait for the attendants to take you to lunch. Recess until 2:15 P. M. Defendants remanded.

1142

(After Luncheon Recess. Trial Continued.)

Mr. Salmore resumed the stand.

Cross-examination by Mr. Wilkinson (continued).

Mr. Wilkinson: Mr. Salmore, may I see your notes, please?

The Witness: Yes, sure. (Hands notes to Mr. Wilkinson.)

Q. In which book is the statement with reference to Moore? A. Both books.

Mr. Wilkinson: May we have a minute 1143
or two?

The Court: Yes.

Q. Will you refer please to Ex. 7 in your testimony? A. May I have my exhibit number?

Q. Your exhibit number——

The Court: Let him have the exhibit so that he can get the number corresponding to his book.

Mr. Wilkinson: Yes. (Exhibit handed to witness.)

The Witness: "Q. I show you this picture and ask you whether this is a picture of the liquor store? A. It is."

Q. Will you continue? A. "Q. Would you mark your name on the back of it? A. Yes, sir."

The Court: Keep your voice up.

1145

A. "Q. Would you write that on the back of it? A. What should I write?"

Q. Just a minutes, who was that question asked by? A. Mr. Ryan.

Q. What was the question and answer again? A. "Q. Would you write that on the back of it?"

Q. What is Moore's answer? A. "A. What should I write?"

Q. The next question, will you read it? A. Witness writes name on. I just have a notation that the witness wrote something on the picture.

The Court: That was before the next question?

1146

The Witness: Yes.

Mr. Wilkinson: May I interrupt? I think through inadvertence the stenographer missed the question and answer that followed directly after the question and answer he read.

Q. Referring back, Mr. Salmore, Mr. Ryan asked him to write on this photograph and George

Moore said, "What shall I write?" A. "What should I write?"

Q. Did Mr. Ryan answer that?

The Court: What happened at that time?

The Witness: He said, "Is that the place you robbed?" is the next question.

Q. Is there any statement there as to what George Moore was to write on the picture? A. No.

Q. Nothing in your notes at all? A. Nothing at all, sir.

1148

Mr. Wilkinson: That is all. No further questions.

Cross-examination by Mr. Fleischman.

Q. Mr. Salmore, what were your hours of duty on February 7th? A. On February 7th I was on 24 hour duty.

Q. Will you explain to us what that means? A. I was "on call" at all hours of the day and night, what is called in the office "Homicide Felony Detail."

Q. What time did you report for duty on that day? A. I reported on duty at 9 o'clock in the morning.

1149

Q. You were on duty continuously from 9 o'clock until what time? A. I was on duty continuously from nine o'clock A. M. until the time I went home after the completion of the last statement in this case.

Q. Which was about 3:23 on the early morning of February 8th, is that right? A. No, sir, after the completion of the last statement, after I tran-

scribed the last statement into typewritten form, after it was all finished and signed, I left and went home.

Q. What time was that? A. Approximately six o'clock.

Q. Six o'clock in the morning, February 8th? A. That is right.

Q. You were on continuous duty for thirty hours, is that correct? A. No, I was on continuous duty I should say, roughly, around 21 hours.

Q. You say you took a statement from the defendant Lester Haughton in question and answer form? A. I did.

1151 Q. That statement, or questions and answers comprise pages 1 to 38 of your notes, does it not? A. The statement of Lester Haughton starts at page 14 of my notes and ends at page 37.

Q. It starts at what page? A. Page 14.

Mr. Fleischman: May I see your notes a minute please?

(Witness hands notebook to counsel.)

Q. On page 14 I see the deletion of the name "Horton," as you spelled it; you corrected it by spelling it "Haughton." A. Haughton.

Q. You had written— A. "Horton" I had

1152 written.

Q. From whom did you get the spelling? A. From the defendant.

Q. You originally put it down "Horton"? A. That's right.

Q. Did you ask how his name was spelled? A. I asked—Mr. Ryan asked "What is your name?" He said, "Lester Horton." I wrote it out. Then

he spelled it "Haughton." Then I made my correction as you see it there.

Q. Referring to your exhibit——

The Court: You can only refer to the People's exhibits in this case.

Q. Referring to People's Ex. 7— A. Yes, sir.

Q. You say the defendant, Lester Haughton, wrote his name on that? A. He did.

Q. In your presence? A. He did.

Q. Will you please refer to your notes and the questions and answers that refer to his writing his name on the exhibit just referred to? A. 1154
Yes, I will if you please—yes.

Q. What was the question? A. "Q. I show you this picture which has been marked Ex. 1, which has on the back 'George Moore, February 7, 1947,' and the words, 'I entered this liquor store on December 13th, 1946, at 6:15 or 6:30 o'clock,' and I ask you if that is the picture of the outside of the store that you went in?" The answer is, "Yes, that is it." "Q. Will you write your name on the back of the picture where George has written?" The picture was then handed to the defendant.

Q. Mr. Ryan asked him to write his name on the back of that picture? A. That is right. "If 1155
you want to write"——

Q. That is all: you have answered.

Mr. Foley: May he be permitted to complete——

The Court: It is his examination.

Mr. Foley: I will withdraw the request.

Q. What was the next question that followed? A. "Q. If you want to, you can write anything you want on there." At that point the witness wrote on the photograph. "Q. You wrote the words, 'This is the store'? A. Yes." "Q. Will you sign"——

Q. That is all, Mr. Stenographer. When did you see Lester Haughton for the first time? A. At the beginning of the statement I took at 3 o'clock in the morning.

Q. You had at no previous time seen him? A. I had never seen him before.

1157 Q. Who was in the room when you came in to take the statement? A. At the time I came in to take the statement, I noted the appearances at the beginning of the statement.

Q. Read those names again. A. Chief Assistant District Attorney Ryan, Assistant District Attorney Lechtman, detective Holt, detective Green, myself and George E. Moore.

Q. Were there any other people in the room? A. No, sir, not to my knowledge.

Q. Those were the only people in the room at that time? A. That's right.

Q. Was Ray Shaw in the room at that time? A. I didn't see him.

1158 Q. Were there any other police officers whose names you have not noted in the room at that time? A. I don't think so.

Q. Were those people whose names you have mentioned in the room continuously during the examination? A. I think they were, yes.

Q. Were they there right up to the end of the examination? A. I don't know that, sir.

Q. You can't definitely state whether any additional individuals had come into the room? A. No, sir.

Q. Or any had gone out? A. No, sir.

Q. What time did you complete taking that statement? A. The statement was completed—I think it was completed at 3:23 A. M.

Q. You left the room after taking the statement? A. That is correct.

Q. Where was the statement taken? A. In the office of Chief Assistant District Attorney Ryan.

Q. Did anyone leave with you when you left? A. To my knowledge, no.

Q. Did you return to the room again that evening? A. I did not. 1160

Q. When was the next time you saw the defendant, Lester Haughton? A. This morning when I walked into the court room.

Q. In other words, after leaving the room at 3:23, that was the last you saw of the defendant, Lester Haughton, is that correct? A. On that day, yes.

Q. Today is the first time you have seen him since that date? A. Yes.

Mr. Fleischman: No further questions.

Mr. Foley: No questions.

SYLVESTER RYAN, a witness in behalf of The People, having been first duly sworn, stated that he resided at 3337 Sedgwick Avenue, Bronx, and testified as follows: 1161

Direct examination by Mr. Foley.

Q. Mr. Ryan, are you the Chief Assistant District Attorney of Bronx County? A. I am.

Q. How long have you been such Chief Assistant? A. For about fourteen years.

Q. Did you in the regular course of your duties on the night of February 7th, 1947 ask questions of the defendant George Moore? A. I did.

Q. And did he make replies to those questions? A. He did.

Q. Did you have a Steongrapher record them? A. I did.

Q. Who was the stenographer? A. Arthur Salmore.

Q. After Mr. Salmore had taken a statement
1163 or made a record of questions asked by you of the defendant Moore, did you receive from him or did he send you a transcribed copy of the questions and answers? A. He did.

Q. And is this the copy which you received? A. It is.

Q. I ask you to examine it, please. Go through the pages. A. I have examined it and it is.

Q. Now, Mr. Ryan, did you receive that transcript, People's Exhibit D for Identification, intact and bound together as it is now? A. No.

Q. How did you receive it? A. My recollection is that I first received three or four pages, the first three or four pages of this statement, and then as time proceeded I received or there was
1164 put on my desk or handed to me one or two pages at a time until the entire statement had been completed.

Q. What did you do with that statement as you received it piecemeal? A. When I received the first three or four statements, the first three or four pages, I received a carbon copy and an original. I separated the carbon copy from the original. I retained the carbon copy and I handed

the original to George Moore, the original of the four pages or three pages, and then as each page or two came up and as we reached them, as we proceeded I gave to George Moore the original of the statement and I retained a carbon copy of it.

Q. Did he read each page in your presence? A. He did.

Q. I direct your attention to the bottom of the first page, the name George Moore there. Do you know who put it there? A. That was written by the defendant George Moore.

Q. After having read that page? A. Yes, sir. 1166

Q. And is that true of the name George Moore that appears on each successive page of that statement? A. It is.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: In behalf of the defendant George Moore I object to the admissibility of that statement at this time. The statement is already in evidence, having been testified to by the Stenographer, and the second statement alleged to go in is prejudicial to this defendant. It violates his rights and is immaterial, irrelevant and incompetent.

The Court: Overruled.

Mr. Wilkinson: I respectfully except. 1167

Mr. Fleischman: Your Honor pleases, in behalf of the defendant——

The Court: This is received as to the defendant Moore, not received as to the defendant Haughton.

(People's Exhibit D for Identification received and marked People's Exhibit 25.)

Q. Now, Mr. Ryan, I give you what is now People's Exhibit 25 in evidence. Did you have any conversation with Moore concerning what would be done with that statement as to making corrections? A. I did.

Q. What did you tell him? A. When the first three or four pages came in and I had separated them, I gave Moore the originals. I told him that I would read out loud the questions and answers and he should follow with me and read to himself as I read from the original. I told him that if there was any correction that he desired
1169 to make he should stop me as I read and we would come back to that particular portion of the statement where he had stopped me and he could then make any correction that he desired. If when I finished with the page he had no correction to make, I would like him to sign at the bottom of each page.

Q. And did you follow that procedure throughout the reading of this entire statement, People's Exhibit 25? A. I did.

Q. And did the defendant make any changes in it? A. He did.

Q. Were they made in pen and ink? A. Made with pen and ink, with my fountain pen I think.

Q. Will you go to the first one that you find?
1170 A. The first correction he made was on page three.

Q. Will you please read from the bottom of page two, the question that was asked and the answer as it was when you received it from the Stenographer? A. "Question: What did you do then? Answer: We walked over till we had gotten where the whiskey store was and we were

supposed to walk around the block and I seen the liquor store."

Q. What correction did the defendant George Moore make? A. He said that that wasn't correct. He wants to change the word "I" to "we."

Q. Did he do so? A. He did and he put his initials beneath it G. M. I told him that he should initial any change he made and he did. After he crossed out the word "I" and put in the word "we" he put in the letters G. M.

Q. Will you read the next question and answer? A. "Question: Are you familiar with The Bronx? Answer: I think not." 1172

Q. That is as you received it from the Stenographer? A. That is.

Q. Mr. Salmore? A. Yes.

Q. Did he make a change in the answer? A. He changed the answer from "I think not" to "I no not." He spelled no n-o, crossed out the word "think," put in the word "n-o," put his initials G. M. right beneath it.

Q. Will you proceed to the next correction you find in there? A. The next correction was at the foot of page four of the statement.

Q. Will you please read the question and the answer as they were when you got them from the Stenographer? A. When I received it from the Stenographer it read: "Question: What was the 1173 conversation you two had? Answer: The conversation was that I told him first, I asked him what are you back there for and are the girls easy, and he said yes. I was not intending about raping them, and he said yes and I told him I came up because it was the 13th to bullshit around and I said I wanted to go back and try

to win some money in poker and we came to Webster Avenue. We came down there and he said go on and I had the thing with me and that was the first time I said I don't, I don't like and he said let's"——

Q. Let me call your attention to that, Mr. Ryan. It is partly crossed out by correction. "That was the first time I said." A. "That was the first time I said it don't look right and he said let's go in and I walked by and walked to the corner and I said no and he said I am going in."

1175 Mr. Wilkinson: I object to any further reading of this statement in view of the fact that it has already been read by the Stenographer.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

The Witness: "And I said fuck it, I am going in too; I have nothing for Christmas, and I went in."

Q. Will you turn back, please, now and read the corrections that were made by the defendant Moore?

1176 Mr. Wilkinson: If the Court pleases, before any further reading from documents, may we as Defense Counsel ask for copies of the documents that the District Attorney is reading from?

The Court: This is in evidence and you can have it just as soon as he is finished looking at it.

Mr. Wilkinson: I would like the record to note at this time that Defense Counsel hasn't any copies of the records from which the District Attorney is reading.

The Court: Proceed.

Mr. Foley: May I correct the record and state that the District Attorney isn't reading. The witness is.

The Court: Proceed.

The Witness: George Moore crossed out in the bottom of the answer on page four the words "told him first." He also crossed out the words "what are you back there for and" and in place of 1178
that he just substituted one word, so that it read "the conversation was that I, I asked him are the girls easy and he said yes," and he put his initials G. M. Then he crossed out the word "about" and the words "and he said yes" and where he crossed out the word "about," he put in the word "to" so as to change it from "I was not intending about raping them" to read "I was not intending to raping them," and he left the words "he said yes" out entirely.

Q. Was that initialed? A. There was one initial for those various changes at the bottom of the second line and then he signed right two lines below. At the top of page five he crossed 1179
out the words "We came down there and he said go on and I had the thing with me and that was the first time I said it don't look right and he said," he crossed that all out and he then wrote back the words "he said" and he added in on the next line after "let's go in, and I said no," and he put his initials G. M. there.

Q. Where do you find the next correction that was made by Moore? A. The next correction is on page nine.

Q. Will you read the question and answer as the statement was when you received it? A. "Question: I don't know the avenues; give me if possible the direction you ran. Answer: I will give you the direction. I came out of the whiskey store and turned right to the corner. I run up that corner to a bridge going over something. It was a highway or tracks there. I seen some children on the bridge. I turned right again
1181 to a school yard and I seen myself walled in and that is where I lost him. He was walled up there. I didn't run where I was going and the next thoroughfare I seen I was walking up three-quarters of the way up and I met a colored fellow with a dog." He crossed out the words "he was walled up"; right after "he was walled up there I didn't," crossed out the word "run" and he put in the word "No," n-o, "I didn't no where I was going" and he put the initials G. M.

Q. Where do you find the next correction that was made in this statement, People's Exhibit 25, by the defendant Moore? A. At the foot of page nine he initialed a typewritten correction, which apparently was a typographical crossing out of
1182 some writing. He put his initials there.

Mr. Wilkinson: I move to strike out the answer as not responsive and the conclusion of the witness.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. There was, when you received this People's Exhibit 25 from the Stenographer, a line of Xs marking out something that had been on the page?

Mr. Wilkinson: I object to that as leading the witness.

The Court: It will speak for itself in any event.

Q. But that is what he initialed? A. Yes, sir.
Q. Although he himself did not change it?

Mr. Wilkinson: I object to the District Attorney leading. 1184

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

A. That is correct.

Q. Will you find the next correction that George Moore made in his statement? A. He made a correction on the next page, on page ten.

Q. Will you please read the question and answer as they were when they came to you? A. "Question: What is his last name? Answer: I really don't know that."

Mr. Wilkinson: I would like to object to any further reading. It is the second time that this statement has been read and it is prejudicial to this defendant. I take exception to any further reading of lengthy statements. 1185

The Court: Overruled.

Mr. Wilkinson: Which have already been read.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. Will you start that again, Mr. Ryan, and read it? A. "Question: What is his last name? Answer: I really don't know that, and I asked him, will you tell my friend Adolph Clark to come to the house at once. I didn't return home. I was hurt. If he didn't know it, it was not to my knowledge. I went home and washed my arm." He crossed out the word "didn't" and he put in "then" and initialed it, so that it read "I returned home. I was hurt," instead of "I didn't return home. I was hurt."

Q. It read how after it had been corrected?
1187 A. "I then returned home. I was hurt."

Q. Will you please find any other correction he may have made in his statement? A. He made no further correction in this statement.

Q. Did you later that evening take another statement from the defendant Moore? A. I did.

Q. Did you ask the questions? A. I did.

Q. Did Moore make the replies? A. He did.

Q. By whom were they recorded? A. Arthur Salmore.

Q. After the completion of that statement did you receive a transcript of the questions asked by you and the answers made by Moore? A. I did.

Q. I show you People's Exhibit for Identifica-
1188 tion E and ask you whether that is the transcript you received. A. It is.

Q. Did you have a conversation with Moore? Pardon me. Did you follow the same procedure with Moore concerning the reading of that statement as it came to your hands? A. Yes, sir.

Q. Did he sign that statement? A. He signed each page of it.

Q. In your presence? A. Yes, sir.

Mr. Foley: I offer it in evidence.

Mr. Wilkinson: Same objection.

The Court: Same ruling; received.

Mr. Wilkinson: I respectfully except.

The Court: Received in evidence only as to the defendant Moore and not as to the defendant Haughton.

(People's Exhibit E for Identification received and marked People's Exhibit 26.)

Q. Mr. Ryan, I return you that statement, which is now marked People's Exhibit 26 in evidence, and ask you whether or not the defendant Moore made any correction in that statement in your presence. A. He made one correction.

Q. On what page is it, please? A. On the last page.

Q. What was the correction? A. At the end of the statement were the words when I received it "statement concluded at eleven fifty-five a.m." He crossed out the words "a.m, a" and inserted in pen and ink "p.m" and his initials G. M.

Mr. Foley: Thank you.

Mr. McDonough: At this time, if your Honor pleases, I would like to make a further objection to this statement going into evidence, because I believe it was on this statement there were certain references made to a photograph, to which I believe the objection was sustained when the Stenographer was reading from his notes and if those questions which were objected to at the time they were read by the Stenographer are con-

tained in that statement, I think they should be deleted.

The Court: I have no independent recollection at this time.

Mr. Foley: There was no objection sustained, if your Honor please, concerning the questions and answers that were made. The objection was raised to my offer in evidence of the picture which was discussed in the notes.

Mr. McDonough: And I believe also as to the Stenographer reading.

The Court: Overruled. You have your exception.

Mr. McDonough: Exception.

The Court: I remember that point now.

By Mr. Foley.

Q. Later on, Mr. Ryan, or the next morning, February 8th, did you take a statement from the defendant Lester Haughton? A. I did.

Q. Did you ask the questions personally? A. I did.

Q. Did he answer them? A. He did.

Q. Who recorded them? A. Arthur Salmore.

Q. Did you subsequently receive People's Exhibit for Identification F that I now hand you? A. I did.

Mr. Wilkinson: May I have an instruction from the Court that this is not binding on the defendant Moore?

The Court: I so instruct the Jury. This is received as to the defendant Haughton and

not received in evidence as to the defendant Moore.

Mr. McDonough: If your Honor please, I would like to ask at this time to have a preliminary examination as to that particular statement. May I ask some questions of Mr. Ryan concerning that statement?

The Court: I don't understand you.

Mr. McDonough: I believe the offer is to put it in evidence and I would like to make an objection to it, but before I do I would like to ask some preliminary questions of Mr. Ryan.

1196

The Court: I will permit it.

Mr. Foley: It hasn't been offered as yet.

Mr. McDonough: Oh, I thought it had.

Mr. Foley: I will offer it in a minute.

By Mr. Foley.

Q. Did you have a discussion as the sheets came to you; is it People's Exhibit 26? A. No. This is marked People's Exhibit F for Identification.

Q. People's Exhibit F for Identification. When that came to you piecemeal, did you have a discussion with the defendant Haughton? A. I had a talk with him.

1197

Q. Was it substantially the same as the instructions and talk that you had with Moore? A. It was.

Q. Did you follow the same procedure with him? A. I did.

Q. Concerning the original and the carbon? A. I did.

Q. After all the sheets were in your possession, did the defendant Moore sign each page in your presence? Haughton; pardon me, sir. Did the defendant Haughton sign each page in your presence? A. He signed each sheet as he completed and I completed reading it, so that he had signed some of them before the entire statement had come up from the Stenographer's room.

Q. And in the end were they all signed? A. They were.

Q. By him? A. Yes, sir.

1199 Q. In your presence? A. Yes, sir.

Mr. Foley: I offer it in evidence.

Mr. McDonough: At this time——

The Court: You may ask.

Mr. McDonough: May I ask some questions?

The Court: You may.

By Mr. McDonough.

Q. Mr. Ryan, at what time was this statement first taken? A. Which statement, Counsellor?

Q. The one that you just were looking at and was offered in evidence. A. I could tell you the

1200 exact time if I could refresh my recollection, if you want.

The Court: You may.

The Witness: This statement was taken at three o'clock in the morning.

Q. Now, you mean by your statement certain answers which were made to questions which you put to Haughton, is that correct? A. No, I mean

these definite questions and answers which were recorded by Mr. Salmore.

Q. And that is what you have been referring to, to the statement? A. That is what the questions have been referring to.

Q. You say that they started asking the questions and Salmore was recording the answers at about three o'clock, is that correct? A. Three o'clock in the morning of February 8th, 1947.

Q. When did you first see Haughton on February 8th? A. To the best of my recollection it must have been around two o'clock in the morning for the first time. It might have been a little 1202
after two.

Q. And did you speak with Haughton from the time you first saw him until the time these questions and answers were taken by the Stenographer? A. Oh, yes.

Q. Now, does that statement include all of the conversation and the answers and the questions and answers that were put to him from the time you first saw him up until the time that this statement was taken? A. No, it does not.

Q. And before this statement was taken did you advise him of his rights as to whether he could remain silent or could make a statement? A. No, I did not.

Q. And was he advised by anyone as to his 1203
constitutional rights? A. Not to my knowledge.

Q. Concerning the making of a statement? A. Not to my knowledge.

Mr. McDonough: If your Honor pleases, I now object to that statement going into evidence.

The Court: Overruled; received.

(People's Exhibit F for Identification received and marked Plaintiff's Exhibit 27.)

By Mr. Foley.

Q. Mr. Ryan, I hand you Haughton's statement, which has now become People's Exhibit 27 in evidence. Did Haughton read that statement over with you as it came up? A. He did.

Q. Did he make any corrections in it? A. He did.

Q. Will you please find the first one? A. On page two.

Q. Will you read the question and the answer as it was when you received it? A. "Question:
1205 Now, did Adolph Stack come up with you and Stack to The Bronx? A. Answer: "No, he didn't."

Q. What correction did he make in it? A. He changed the word "Stack" after "Adolph" to "Clark" and put his initials there, so that it read: "And did Adolph Clark come up with you and Stack to The Bronx? Answer: No, he didn't."

Q. Will you proceed and see if you find another, either a change or an addition? A. On page three.

Q. What was the question and answer as it came to you? A. As it came to me the question read: "How would you and Stack make some
1206 money?" and the answer read: "Answer: Stick-ups."

Q. What change did Haughton make in that answer? A. He added the words after answer "stick-ups, and also to see some girls" and put the initials L. H. after it.

Q. Do you find any other addition or deletion or correction that he may have made? A. On page eleven.

Q. What was the question and answer as you received it? A. As I received it the question read: "Question: Where did you meet Stack, the subway? Answer: 135th Street."

Q. What change did Haughton make in it? A. He crossed out the words "meet" and "Stack" and inserted the words in his handwriting "get off" and then he had the word "the" in his handwriting, which he crossed out and put in the letters L. H., so that the question read after the change: "Where did you get off the subway?" and the answer was "135th Street."

Q. Was there any other correction or change 1208
or deletion made by Haughton? A. No, there was not.

Mr. Foley: May I have a moment, your Honor, till I find a place in some one of these statements?

Q. Mr. Ryan, I show you People's Exhibit 26 in evidence. That was a statement in which you ask questions of the defendant Moore. A. It was the second statement of Moore, yes, sir.

Q. And at what time was that statement begun, please? A. A quarter to twelve midnight.

Q. I direct your attention to page four, the third question down, Mr. Ryan. Will you read it, 1209
please? A. "Question: When you spoke of Raymond, is this Raymond?"

Q. And at that time did you show the defendant Moore a picture? A. I did.

Q. Whose picture was it?

Mr. McDonough: I object.

The Court: Objection sustained.

Mr. Foley: All right, that is all. Your witness.

Mr. Wilkinson: I would like the record to note in behalf of the defendant Moore that the defense attorneys haven't yet seen the evidence, the statements that were introduced in evidence, and we are going to ask for permission to now see them and for a recess of ten minutes to examine same before resuming.

The Court: You are entitled to that. Step upstairs, please. Defendants remanded.

1211 (After a short recess the Jury and the defendants return to the courtroom.)

Cross-examination by Mr. Wilkinson.

Q. Mr. Ryan, on February 7th, 1947 at what hour did you see George Moore for the first time? A. My best recollection is it was around six thirty, but I can fix it more accurately if I can look at some office records.

Q. Yes. (Mr. Foley hands papers to Mr. Ryan.) A. I would say it would be about quarter after six in the evening.

Q. And where did you see him? A. In my office in 6-mezzanine floor of this building.

1212 Q. Now, do you know what time George Moore arrived on the sixth floor of this building that day? A. I believe—I don't know, because I was on 6-mezzanine floor, but my instructions were to bring him up immediately to my office.

Q. Who brought him to your office? A. My recollection is Chief County Detective Hanley. He may also have been accompanied by County Detectives McGarry, Denny and Honohan.

Q. Prior to around six fifteen of that day did you interview a George Clark? A. Adolph Clark.

Q. Adolph Clark? A. Yes.

Q. You had interviewed him? A. Oh, yes.

Q. And you had talked with him? A. Yes.

Q. And had you also interviewed Dupre, a fellow by the name of Dupre? A. Harold Dupree, D-u-p-r-e-e.

Q. And a Brown, a Mr. Brown? A. Not prior to speaking to George Moore.

Q. Otis Banks? A. Not prior to speaking to George Moore.

Q. Now, when George Moore was brought to your office at about six fifteen on February 7th, 1947 did you have a talk with him? A. Yes. 1214

Q. Did you call in a stenographer? A. Immediately?

Q. Immediately. A. No.

Q. Well, when he first came in was he seated in your office? A. Seated right alongside of my desk.

Q. And did you ask him various questions? A. Yes. I asked him whether he was hungry, I think was the first question.

Q. And what did he say to that? A. He said he had eaten, but he would like a sandwich and I sent out and had something to eat.

Q. Did you ask him about this case? A. Ultimately, yes. 1215

Q. When you say ultimately, how long would that be after six fifteen? A. Half an hour, three-quarters of an hour.

Q. And during the half hour were you talking with him? A. Yes.

Q. And during that half hour were you questioning him about this case? A. No.

Q. Were you questioning him about Harold Dupree or Adolph Clark? A. My recollection is that we didn't begin that questioning for about a half an hour or three-quarters of an hour.

Q. All right, and that would be about quarter of seven? A. Around seven o'clock. I am not accurate on the time. Approximately.

Q. About seven o'clock you started? A. Seven, quarter to seven, about that time.

Q. You started questioning relative to this case? A. That's right.

Q. Then did you have a Stenographer present? A. No.

1217 Q. And how long did you question him about this case before you called the Stenographer in? A. The time that the Stenographer was called in would be shown on the statement. I think it was about eight o'clock. I must have talked to him about the case forty-five minutes or an hour.

Q. And did you leave your office at any time? A. You mean my immediate private office?

Q. Yes. A. I think I went out to the washroom a couple of times.

Q. Did George Moore leave the office at any time? A. I think he did, maybe for the same purpose, or he might have been put in another room while I brought in another witness.

1218 Q. And when he was put in another room, was that in the custody of detectives? A. No. The County Detectives were with him and there might have been police detectives with him as well.

Q. In this other room? A. Yes, either in the adjoining room to mine or maybe a room down the hall, one or two rooms down the hall, but there was a county detective with him at all times, as I remember.

Q. Well, how long did you discuss this case with him without a Stenographer being present before you interrupted the conversation and left or before he left? A. I don't think there were any definite interruptions at any time that I recall. I talked with him about the case for about an hour before I called in a Stenographer. It might have been a little less; it might have been a little more.

Q. But what went on during that conversation you did not have recorded, is that correct? A. That is correct.

Q. Well now, about seven o'clock or quarter to seven, when you commenced talking to him about the case, did you ask George Moore if he committed this crime? A. During the course of my questioning I did. 1220

Q. Well, did you ask him about a quarter of seven or seven o'clock at the start? A. I couldn't fix the accurate time when it was, but before I brought in the Stenographer I asked him a number of times about this crime and whether he had committed it.

Q. And what did he say? A. At first he denied it and then he admitted it.

Q. When you say at first he denied it and then he admitted it, what time would you say he admitted it? A. It is hard for me to fix the accurate time. I would say it was about a half an hour before I brought up Mr. Salmore; approximately half-past seven. 1221

Q. But at first when you questioned him he denied it, is that correct? A. That is correct.

Q. And thereafter did he leave your office to go to another room? A. He might have.

Q. With detectives? A. With county detectives and the police detectives. That might have happened. It probably did happen.

Q. And would you know exactly how many times he left your office with the detectives and came back; would you know how many times he did that before he finally admitted it? A. No, I wouldn't keep any record of that.

Q. You didn't have any Stenographer there until you got some admissions, is that correct? A. That is correct.

Q. Well now, before you got any admissions, would you know exactly how many times he left
1223 your office with the detectives, went to another room with the detectives and came back to your office? A. Do you want my best recollection?

Q. Your best recollection. A. My best recollection is it might have happened three or four times.

Q. And after three or four times being taken to another room with the detectives and brought back to your office, he finally admitted it, is that correct? A. He finally admitted it around half-past seven, yes. I think it was about that time.

Q. And then you called in a Stenographer? A. That's right, after he told me the story in detail. It might have been I questioned him a half an
1224 hour or so, got the details of it from him; then I called up the Stenographer. It must have been around eight o'clock.

Q. Oh, you got the details first and then called the Stenographer? A. Oh, yes.

Q. And then when the Stenographer came in you asked the questions? A. That's right.

Q. Was Mr. Shaw in the room while you were conducting the questioning? A. I think at vari-

ous times he was. Questioning, do you mean of Moore?

Q. Yes. A. I think he was.

Q. Does his name appear on the record or statement taken by your office? A. That I don't know.

Q. Well, I will ask you to look at both of these statements and ask you if Mr. Shaw's name appears on them. A. Do you mean as those present when the statement was commenced?

Q. As being one of those present. A. No, it does not. Those are the names of the persons present at the time of the commencement of the 1226
statement.

Q. Do you know whether or not Mr. Shaw was present at the commencement of either the first or second statement? A. That I don't remember.

Q. Well, did you confer with Mr. Shaw before taking these statements? A. Do you mean ask him some questions? I might have. I honestly don't remember whether I did or not. I don't think I did. I might have, but I don't recall it.

Q. Well, did you bring Mr. Shaw into your room at any time to identify George Moore? A. No, I did not.

Q. Did you at any time ask George Moore, ask Mr. Shaw to identify George Moore? A. In the course of the statement? 1227

Q. Yes. A. No, not in the course of the statement, no.

Q. Before the statement was taken? A. No, I don't think I did. I think between the two statements there was a talk between Shaw and the defendant Moore.

Q. Did you suggest that talk? A. No. It was one of those spontaneous things that come up of

its own accord. There was no suggestion of mine. It was a talk, I think, that Moore started himself with Shaw.

Q. Well now, after the first statement was brought back by the Stenographer, did you read it to Moore? A. Yes.

Q. And did you stand within two or three feet of him? A. No, I wasn't standing at all. I was seated at my desk. Moore was seated in a chair right alongside of my desk immediately to my right and as he signed the bottom of each page he leaned either on the corner of my desk or on
1229 the shelf that you pull out, don't recall which. He was right on my right and we were both seated all that time.

Q. Well, do you know that Mr. Shaw testified here that you stood about two or three feet from Moore, who was seated, and read these statements to him? A. I don't know what Mr. Shaw testified to.

Mr. Foley: I object, if your Honor please, inasmuch as the question does not correctly quote the testimony.

The Court: I don't recall it. Have you got the point available in the testimony?

Mr. Wilkinson: I haven't got it available,
1230 but I will get it, Judge.

The Court: All right.

Q. Now, you say Mr. Shaw may have been present during the questioning of Moore, is that correct? A. My recollection is that in one of the questionings of Moore, while the Stenographer was present, Shaw was there. Whether or not he was there when the statement began or not, I don't honestly remember.

Q. Well, before the statement began did you ask Mr. Shaw to look at Moore and see if he could identify Moore? A. I don't think I did.

Q. Did you have Clark or any of Clark's friends brought in there while the statement was being taken from Moore? A. Not while the statement was being taken. Before the statement was taken and after the statement was taken.

Q. That is Harold Dupree and Adolph Clark? A. Before the statement was taken and after the statement was taken, at various times they were brought in and spoke to Moore or I would speak to the three of them.

1232

Q. Well now, was the statement interrupted at any time? A. No, it was not.

Q. It was a continuous statement? A. Once it was started it was continuous with no interruptions.

Q. Mr. Ryan, I show you People's Exhibit 25 and direct your attention to page three and on page three in two different places there are words crossed out, are there not? A. Yes, sir.

Q. Now, were those papers stapled together when the corrections were made? A. No, the papers were not stapled; no, until the entire statement had been delivered to me, had been read, had been corrected and signed, and upon the completion of the statement and while Moore was still there, I have a little stapling machine on my desk and I stapled them together after they had been read, after they were corrected and after they were signed.

1233

Q. You will notice that there are many changes in that statement, is that correct? A. Many changes of what nature?

Q. Many marks in ink, crossing out words. A. I wouldn't say there were many. There are several.

Q. Several? A. Whether it is many or not is a question of opinion.

Q. There are several, at any rate? A. Yes.

Q. Were those typographical errors, those words that are stricken out? A. Do you want my opinion on that matter?

Q. No. I have asked a question if they are typographical errors. A. That I wouldn't know. I didn't do the typewriting, Counsellor.

1235 Q. Did you ask the Stenographer to compare the transcript, typewritten pages with his notes? A. No. I did not. My instructions to him were: "Go downstairs; typewrite this as quickly as you can and send them up to me as it comes off the machine."

Q. Well, do you know whether the Stenographer's notes read as the transcribed typewritten page or do they read as they stand now with the changes in them? A. That I don't know. I have never seen the notes and I couldn't read them if I did.

Q. Did you question the Stenographer about it? A. No, I did not.

1236 Q. Now with reference to any of those changes made in ink, did you advise the defendant George Moore that he could make changes? A. I told him as I began or before I began to read the statement that if there were any corrections he desired to make, he should make them; he should stop me as I came or as I completed any answer that he wanted to correct and then he could make any correction in that answer that he desired to make.

Q. This is while you were reading it to him? A. No. This is before I began the reading and as I read he would say "stop". I think he read it part of the time with me. He would say "stop, that's not right" or something to that effect, and I would say: "What is wrong?". He said: "I want to change this." "You make any change you want to."

Q. Were there any changes you pointed out to him? A. No. He made all the changes himself.

Q. That is, the physical changes he made with your pen, is that correct? A. Yes.

Q. But were there any of those changes that 1238
you called his attention to? A. No.

Q. Errors?' A. No, there were not.

Q. Now, Mr. Ryan, you know that Mr. Shaw has testified in this case.

The Court: Page?

Q. Page 202 of the minutes. A. I don't know, Mr. Wilkinson, who has testified. This is the first time I have been in the courtroom since the trial began. I don't know who has been called as a witness or who hasn't.

Q. Now, when you were reading the statements to George Moore, were you standing or were you seated when you were doing the reading? A. I 1239
was seated at my desk all of the time.

Q. Mr. Shaw was present at some time while those statements were being taken, was he not? A. My recollection is he was and while they were being read.

Q. Mr. Shaw has previously testified here in answer to a question: "Where was Mr. Ryan seated or standing when he was doing all this reading?"

Answer: "He was seated part of the time and standing part of the time." Would you say that that answer to that question is incorrect? A. Do you want me to characterize the testimony of another witness? If you do, I would say he was incorrect.

Q. You would say that witness is incorrect? A. Incorrect, yes, sir.

Q. The question asked of Mr. Shaw: "How far away from George Moore was he?" Answer: "A couple of feet." A. That would be correct. I was within two or three feet of Moore as he sat
1241 on my right.

Q. Question: "And on occasions he was standing, you say?" Answer: "Yes, he got up off his chair." Would you say that was a correct or incorrect statement? A. That is incorrect.

Q. Now, Mr. Ryan, you have in the past, have you not, taken many statements from people charged with crime? A. Yes, I have.

Q. And many times in the past you have had those people sign the papers? A. At times.

Q. And sometimes not? A. That's right.

Q. And, of course, at the time you take that statement and obtain their signature, you know that you are going to use that statement in court, do you not? A. I know that it is intended to be
1242 used on trial, yes, sir.

Q. And have you in the past obtained statements and in those statements have you had corrections made in ink in the typewritten pages? A. I have.

Q. And would you say that it has happened many times that there are ink changes in the typewritten pages of purported confessions that you have obtained? A. Well, it is my practice

to try to get signed statements in homicide cases from defendants and, if possible, to have them transcribed; not in the ordinary case on other charges. I have had these statements in homicide cases signed and corrected by defendants.

Q. Did George Moore at any time while in your office advise you that he would like to see a lawyer? A. I don't recall him ever asking to see any attorney.

Q. Mr. Ryan, on that particular night did George Moore advise you that he wanted to see an attorney and you said you would provide an attorney for him? A. No.

1244

Q. And that you sent someone in to him who purported to be an attorney? A. That did not happen, Counsellor.

Q. Well now, while George Moore left your office on one of these three or four occasions and entered another room, did you at any time send anyone in there, representing himself as a lawyer? A. I did not.

Q. Do you know of your own knowledge whether anyone went into one of those rooms, representing himself as a lawyer? A. You mean while I wasn't there? I know that I did not send anybody in, representing himself as a lawyer. I don't believe it was done.

1245

Mr. Wilkinson: I object to that and I move to strike it out.

The Witness: It certainly wasn't done either with my knowledge or consent.

Mr. Wilkinson: It is prejudicial to this defendant.

The Court: Denied.

Mr. Wilkinson: I think the witness ought to be instructed to confine his remarks to the answers.

The Court: I don't think the witness needs any instruction from me.

Mr. Wilkinson: I think it is prejudicial, the statement made by the witness.

The Court: All right, your opinion is noted.

Mr. Wilkinson: I respectfully except.

The Court: Proceed.

1247 Q. Mr. Ryan, I show you People's Exhibit Number 26. There is only one change in the statement, is there not, and that is on the last page? A. That's correct.

Q. And what is that change on the last page? A. When I received it, it read "statement concluded at eleven fifty-five a.m."

Q. What should it have been? A. It should have been p.m. and Moore corrected it and said: "This is p.m." and he put the letters p.m. and his initial G.M. after it.

Q. Did Moore pick it up or did somebody else pick it up? A. The error? My recollection is that Moore picked it up. It might have been picked up simultaneously by both Moore and

1248 myself. I don't honestly remember.

Q. Well now, are there any other of those changes that may have been picked up simultaneously? A. No, none other that I recall.

Q. But with respect to that one it is possible that it was simultaneous? A. That might have happened.

Q. Thank you, Mr. Ryan. No further questions.

Cross-examination by Mr. McDonough.

Q. Mr. Ryan, on February 7th were you in charge of the investigation so far as the District Attorney's office was concerned in this case? A. No. Mr. Foley was in charge. I was working as Mr. Foley's subordinate.

Q. Are you the one that gave the orders to the police or to anyone else as to which persons should be brought into the D.A.'s office? A. At what time now?

Q. After six thirty on the night of February 7th. A. I think so, yes.

1250

Q. Now, you say that the defendant Haughton arrived at the District Attorney's office somewhere around two o'clock, is that correct? A. Well, he arrived, I would say, about half an hour to forty-five minutes before we began his statement.

Q. Now, were you the one who issued the orders or directions to police officers to go to the home of Lester Haughton and bring him back to your office? A. I gave them general orders to go out and get him. His home was one of the places they were to go to.

Q. And do you know a policewoman by the name of Mrs. Ellis? A. Yes, I know Miss Ellis.

1251

Q. And did you direct Mrs. Ellis to go to the home of Lester Haughton accompanied by Detective Tracy? A. The order was given by my authority. Whether I gave it to her personally or not, I don't recall. It might have been one of the other assistants or it might have been one of the police inspectors, but it was done with my knowledge and at my consent, at my direction, I should say.

Q. Did you give a telephone number to Mrs. Ellis to call? A. No, I don't recall that I did.

Q. Well now, can you fix the time when you first spoke to Lester Haughton in the morning of February 8th? A. I would say it was about a half to three-quarters of an hour before the time of that statement, which has been marked in evidence, whatever time is there. I would say I spoke to him for half to three-quarters of an hour before that.

Q. I show you People's Exhibit 27. A. This says three a.m. I would say that Haughton came
1253 into my office about quarter after two, twenty after two, thereabouts.

Q. On the preliminary examination my recollection is that you stated two o'clock. A. I don't think I testified to that, Counsellor.

Q. Would your office records indicate what time that Lester Haughton was brought into your room? A. No, the office records wouldn't indicate what time Haughton was brought into the room.

Q. Well, you now fix the time as about a half hour before this statement was commenced? A. Approximately——

Q. This People's Exhibit 27. A. Approximately a half to three-quarters of an hour, about that
1254 time.

Q. When Haughton first came into your office, did you question him concerning this case? A. I did.

Q. And did you make any memorandum of the questions and his answers to your questions at that time? A. No.

Q. Can you tell us when you first questioned Haughton with reference to this particular crime, did he deny it? A. He did.

Q. For how long a period did he deny that he had anything to do with this crime? A. Fifteen or twenty minutes.

Q. Now, at the time that Haughton was first brought into your office, who was present? A. There was a number of assistants. There were policemen there. I think the Police Commissioner was there. There may have been eight or ten people. Too many.

Q. There were too many? A. Yes.

Q. And it was while they were present that you questioned Haughton and he denied any implication in this crime? A. That's right.

1256

Q. Now, during the course of your questioning of Haughton, did you bring George or have George Moore brought into the room? A. Yes, I think George Moore came in and sat alongside of him, right by my desk.

Q. Now, did you bring in any other persons who were concerned either as material witnesses in this case, any brought in at that time? A. I think Adolph Clark was brought in. That I am not certain of, but I am certain that Moore was brought in. That I am positive of.

Q. And it might have been that Clark was brought in? A. Yes.

Q. And at the time that Moore was brought in or up to that time and while Clark was there, 1257 if he was there, Haughton continued to deny any implication in this crime? A. Up to the time that Moore was brought in, yes.

Q. Now, after Moore was brought in didn't Haughton deny any implication in this crime? A. Not for long.

Q. But he did deny it? A. For a few moments.

Q. For a few moments? A. That's right.

Q. But he did deny it? A. That's right.

Q. Now, prior to the time of the Stenographer getting there to take this statement which is contained in People's Exhibit 27, was Haughton taken out of the room? A. I don't think he was taken out of the room from the time he came in until that statement was concluded by the Stenographer. After it was taken down by the Stenographer, he may have been taken into another room, the adjoining room, while we were waiting for the first few pages to be typewritten,
1259 but that I am not sure of. My recollection is that Haughton remained in the room from the time he came in until the time the statement was entirely signed.

Q. During the time that Haughton was denying any implication in this crime, did you leave the room? A. I don't think I did. I have no recollection of leaving the room. My recollection is that I stayed there.

Q. Now, when Moore was first brought into the room while Haughton was there, did you speak to Moore alone? A. No. My recollection is that I spoke to Moore in the presence of Haughton and we carried on a sort of three party conversation between ourselves, Moore speaking
1260 to Haughton and I speaking to Haughton and I speaking to Moore and in that manner.

Q. Now, before this statement was taken that is contained in People's Exhibit 27 and there were questions put to Haughton, were you the only one that asked the questions? A. I think at one time Mr. Foley asked a question or two.

Q. Did any of the police officers engage in the questioning of Haughton? A. I don't think any

police officer asked any question of Haughton. I think only Mr. Foley and myself.

Q. At any rate, none of those questions and answers or any of the denials of the defendant were made note of in any way? A. The only thing that was made note of was what Mr. Salmore put in his book from three o'clock on.

Q. But so far as his denials, no record was made of those? A. No.

Q. Now I show you, I call your attention to the bottom of page two of People's Exhibit 27 and particularly to a change from the name Adolph Stack, I believe it is, and a change was made to Clark. Now, was it Haughton that discovered that error or was it you? A. That was Haughton. 1262

Q. Now, did you at any time yourself pick up an error that had been made? A. That I don't recall. I don't think I did in this man's statement. Let me look through it.

Q. Well now,— A. If you just give me a chance.

Q. Surely. A. No. There are only three corrections made in this entire statement of Haughton's.

Q. Now I show you People's Exhibit 26 and ask you to look at the last page and to the correction that is made there. A. Do you mean where it is changed from eleven fifty-five a.m. to eleven fifty-five p.m.? 1263

Q. That's right. If I recall your testimony concerning that, I believe you stated that it may have been that you picked up or Moore picked up or you picked it up simultaneously, is that correct? A. I think I said that Moore, either

Moore picked it up or we picked it up simultaneously. That I honestly don't remember, but it was more or less, he treated it as more or less of a joke when he picked it up or made the correction.

Q. At any rate, you didn't sign your initials to any of the changes? A. Oh, no.

Q. Now, these corrections that were made, were they corrections, if you know, of the Stenographer's notes, that is of an error that he made in transcribing them from his original notes to this transcript, to these transcripts? A. That I
1265 don't know. I have an opinion on it.

Q. But you don't know? A. I don't know because I can't read the Stenographer's notes and I don't know stenography and I have never seen the notes.

Q. Now, before you questioned Haughton, when did you see Clark for the first time? A. Do you mean that day?

Q. February 7th. A. It was in the afternoon. I saw Clark—I am looking at the office records: I must have seen Clark for the first time that day about quarter to four or four o'clock that afternoon.

Q. Then after you spoke to Clark who was the next person that you spoke to concerning this
1266 case? A. I spoke to assistants. Do you mean other than assistants or policemen?

Q. Either a person who is a material witness or a defendant. A. We had Dupree up first.

Q. Was he first? A. He was first.

Q. What time did you see him? A. Dupree came up about, it was pretty close to one o'clock.

Q. In the afternoon? A. In the afternoon.

Q. And then whom did you see next? A. Next I saw Adolph Clark. Do you mean of these men?

Q. That's right. A. Of this group?

Q. That's right. A. Adolph Clark. He would be about quarter to four.

Q. And whom next did you see? A. The next of the group other than Dupree and Clark would be Moore.

Q. And then after Moore you saw Haughton? A. I might have seen some of these other witnesses before Haughton was brought in. That I am not positive of. I think we did have some of the witnesses in before Haughton was brought in. Who they are I don't honestly remember. 1268

Q. When you examined or questioned Clark did you have a Stenographer present? A. My recollection is that I did not.

Q. And at no time then while you questioned Clark did you have a Stenographer present? A. That is my best recollection, I did not.

Q. Now, from your questioning of Adolph Clark, is it your opinion that he was involved in this crime? A. My opinion you want, Counsellor?

Q. That's right. A. My opinion is that he was involved in the preparation of the crime; he abandoned it down in Harlem, that he was afterwards an accessory after the fact and he aided to conceal the defendants' identity and the injuries he had received and helped in disposing of the weapon. 1269

Q. And did you advise Clark of that opinion? A. No, I did not.

Q. Did you tell Clark anything concerning his testimony in this case that if he testified in this

case, that he would not be involved in this crime? A. No, I did not.

Q. Did you speak with Otis Banks concerning his being involved in this crime? A. That is the man came down with the gun. I don't think I spoke to him that night. I might have. I don't recall. I think he was handled by some other Assistant or by Mr. Foley.

Q. After he was questioned were the statements Otis Banks made shown to you? A. I don't think I saw them that morning rather. I think they were transcribed that night. I don't recall questioning Banks. I think that was taken care of
1271 by some other Assistant under Mr. Foley's direction.

Q. And Brown, did you question Brown? A. I might have, but I honestly don't remember questioning Brown. I think that was also taken care of by another Assistant.

Q. Now, at any rate, Mr. Ryan, prior to the Stenographer being called to take down the questions that were put to Haughton and the answers that he made, you made no record whatsoever of any conversation or answers that he made prior to that time? A. No.

Q. And that there are no records; it was not recorded, his denial of having anything to do
1272 with this crime? A. No, it was not.

Mr. McDonough: That is all.

Recross-examination by Mr. Wilkinson.

Q. Mr. Ryan, you stated this fellow Clark was an accessory involved in this matter? A. I said an accessory after the fact, Counsellor. That is an opinion of mine.

Q. In your opinion he was involved in the crime? A. I didn't say that. I said I think he was involved in the preparation of the crime, that he abandoned the crime in Harlem, that after he became an accessory.

Q. That is your opinion? A. That is only an opinion.

Q. Is that your opinion from discussing it with him? A. No, I never discussed the law with any of these people on that theory, on that question. I never entered into any legal discussion with Clark.

Q. Well, was Clark reluctant to talk to you? 1274
A. In the beginning he was, I think. My recollection is he was.

Q. And did you then discuss with him the possibility that he might be involved in some criminal charge? A. I was discussing this hold-up and murder with him. I wanted to know what part he played in this.

Q. And he was reluctant to tell you what part he played in it? A. In the beginning, yes.

Q. Well now, when you first saw Clark, was that on February 7th or 8th? A. It was on the same Friday. It ran from Friday noon time or one o'clock till the next morning about half-past five or six o'clock when we left the office.

Q. Do you have a recollection of his appear- 1275
ance at all, Clark's appearance? A. Do you mean what he looks like?

Q. Yes. Is he a light colored boy? A. I honestly couldn't pick him out of a thousand or pick him out of two. I saw him that day. I don't think I have seen him since, and same as the defendants. I don't think I have seen them since until today.

Q. Did you tell Clark on that night you would want him to testify in this case? A. I don't think I even discussed that with him.

Q. Were there any promises made to him? A. I made him no promises, no. I made him no promises of any kind.

Q. Anybody else make him any promises? A. Not to my knowledge. I didn't make him any promises.

Mr. Wilkinson: No further questions.

Recross-examination by Mr. McDonough.

1277

Q. Just one. Mr. Ryan, were you the one who ordered these men held as material witnesses or did you make application that they be held as material witnesses? A. Well, we work as a team down there. Who gave the orders, whether it was Mr. Foley or I after speaking with Mr. Foley, I don't know. It was all with Mr. Foley's approval. He was present.

Q. But, at any rate,— A. Who gave the final orders. I don't remember.

Q. But, at any rate, it was after you spoke to Clark that he was held as a material witness? A. Oh, yes. He wasn't committed as a

1278 material witness till the early hours of the morning, as I remember.

Mr. McDonough: That is all.

Redirect examination by Mr. Foley.

Q. I want to direct your attention to part of your examination, Mr. Ryan. Counsel spoke to you about Haughton's denying participation in

this crime when he first came in. You were asked did you bring Moore in. When Moore was brought into the room where you were interrogating Haughton, did Haughton and Moore have a conversation in your presence? A. Yes, they did.

Q. What did Moore say to Haughton and what did Haughton say? A. Moore himself says: "I have told everything. They got everything. Our friends spoke on us." He says: "Everything is up. You might as well tell him what happened," and then they carried on a conversation back and forth and Haughton then began to tell me just what happened. 1280

Mr. McDonough: I object to after the words "began". I believe the testimony was that he denied it after that and it was some few minutes.

The Court: Wait a minute. The answer will stand to that question. Proceed.

Mr. Foley: That is all.

Recross-examination by Mr. McDonough.

Q. Mr. Ryan, in that conversation you have just related, was there a stenographic record made of that conversation? A. No, there was no Stenographer there at that time. You mean between Moore, Haughton and myself? 1281

Q. That's right. A. No, there was no Stenographer present.

Q. And after that conversation you testified before, I believe, that Haughton denied his participation again? A. No, not after the conversation that I am referring to. When I first ques-

tioned Haughton he denied it. I later brought in Moore. Moore started to talk to him or I started to talk to him and he denied it. Moore then began with Haughton and said: "They have everything. Our friends have spoken about it. I have told them everything. You might as well tell them and let's take what is coming to us," and then he started to tell. That was in substance what happened.

Mr. McDonough: That's all.

Mr. Wilkinson: No further questions.

The Court: That is all.

1283 (Witness excused.)

Mr. Foley: The People rest.

Mr. Wilkinson: Your Honor please, in behalf of the defendant George Moore, at this time I respectfully move to dismiss the indictment on the grounds that The People have failed to make out a prima facie case against the defendant Moore.

The Court: Motion denied.

Mr. Wilkinson: I respectfully except. May I ask your Honor to instruct the Jury that a denial of the motion at this time is no indication that the Court has any opinion in the matter?

1284 The Court: I so instruct the Jury. The Court is not entitled to indicate or express an opinion with respect to the facts at any time. I am simply passing upon a proposition of law submitted to me by the attorney representing Moore.

Mr. Fleischman: Your Honor, at this time I move in behalf of the defendant Lester Haughton that the indictment be dismissed

on the ground that The People have failed to make out a prima facie case.

The Court: Motion denied with the same instructions.

Mr. Fleischman: Exception.

Mr. Wilkinson: Exceptions for both.

The Court: You are admonished by the Court not to discuss the case, Gentlemen. Form no opinion until the matter is submitted to you by me. Eleven o'clock tomorrow morning. Defendants remanded.

(Whereupon the further trial of the case was adjourned to March 28th, 1947, at eleven 1286
a.m.)

New York, March 28, 1947.

TRIAL CONTINUED.

Before: HON. JAMES M. BARRETT, *County Judge*, and a jury.

Appearances: Same as heretofore noted.

(The jurors were called individually by name and each answered.)

Mr. Wilkinson: George Moore.

GEORGE MOORE, a witness in his own behalf, having been first duly sworn, stated that he resided 1287
at 241 West 135th Street, Manhattan, and testified as follows:

Direct examination by Mr. Wilkinson.

Q. Now, George, how old are you? A. Thirty-four, sir.

Q. Are you married?—A. I am.

Q. Do you have any children? A. I have, sir.

Q. How many? A. One, sir.

Q. A boy or girl? A. A girl.

Q. How old is she? A. She is three, sir.

Q. You have been previously convicted of a crime, have you not? A. I have, sir.

Q. What was that? A. Assault, sir.

Q. And did you serve time in prison for that? A. I did, sir.

Q. And after you served time you came out, is that correct? A. Correct.

1289 Q. On parole? A. Correct.

Q. Now, coming down to the date of December 13th, 1946, did you at any time in the afternoon of that day see Lester Haughton and Adolph Clark? A. I did, sir.

Q. And where did you see them? A. On Eighth Avenue between 135th and 134th Street.

Q. And did you have a conversation with them? A. Not what you say a conversation; just had a few words with them.

Q. And at any time that afternoon did you obtain the forty-five automatic gun that is in evidence here, People's Exhibit 12? A. I had it in my possession at one time, sir.

Q. And where did you get that gun from? A.

1290 I got it from Otis Banks.

Q. And was that on the afternoon of December 13th, 1946? A. It was.

Q. And when you got that gun from Otis Banks on the afternoon of December 13th, what did you do with it? A. I gave it to Adolph Clark, sir.

Q. And where did you give it to Adolph Clark? A. On Eighth Avenue between 34th and 35th.

Q. And what time of that day would you say you gave it to Adolph Clark? A. It must have been around three, sir.

Q. And at the time did you have any discussion with Adolph Clark? A. Well, Adolph Clark asked me would I go to Banks and get the gun for him like I had did a couple of more times and I told him I would, so I went and got the gun for him and I turned it over to him.

Q. You say that a couple of other times you had gotten a gun from Banks for Clark? A. I had, sir.

Q. And on this occasion you got it from Banks and turned it over to Clark? A. Right, sir. 1292

Q. Now, you heard Clark testify in this court, did you not? A. I did.

Q. And did you hear Clark state that you and Haughton and Clark had discussed the possibility of a hold-up in The Bronx? A. I heard him, sir.

Q. And did you hear Clark say that after that discussion that you and Haughton had left him and gone to The Bronx? A. I heard him say that.

Q. Did you have such a discussion with Clark on that afternoon? A. No, sir.

Q. Did you at or about the hour of five p. m. leave Clark and Haughton and go to The Bronx with Haughton? A. I did not.

Q. Did you on December 13th, 1946 at about 1293 the hour of five or six p. m. go to Ray's liquor store at 1439 Webster Avenue? A. I don't even know where it is at, sir.

Q. Were you ever to Ray's liquor store at 1439 Webster Avenue? A. Positively not, sir.

Q. Did you on December 13th, 1946 about the hour of five forty-five or six p. m. enter Ray's

liquor store at 1439 Webster Avenue? A. No, sir. I didn't.

Q. At about the hour of five forty-five or six p. m. on December 13th did you and Haughton go into Ray's liquor store at 1439 Webster Avenue? A. No, sir.

Q. And did you about that hour enter that store, carrying People's Exhibit number 12, a forty-five automatic— A. No, sir.

Q. —revolver? And did you on that date enter the store with that gun and discharge the said gun in that store? A. I did not.

1295 Q. Were you at any time ever in that store at 1439 Webster Avenue? A. I was never in the store.

Q. Did you on December 13th, 1946 fire People's Exhibit 12, a forty-five automatic, and discharge the shells at or into one Detective Burke? A. I have never fired a gun in my life, sir.

Q. Now, on or about the 7th day of February, 1947 were you brought to the District Attorney's office in Bronx County in the company of detectives? A. I was, sir.

Q. And what time would you say you arrived at the District Attorney's office on that date? A. Well, I would say at the Tombs we eat around three-thirty or quarter to four and while I was

1296 finished my meal there, which wouldn't take over fifteen minutes, I was asked to come downstairs and around three-quarters of an hour I was called; a detective came down there for me. That may have been around no later than four-thirty or quarter to five.

Q. And did the detectives bring you directly to the District Attorney's office here in this building? A. They did.

Q. And when those detectives brought you to this building, did they take you into Mr. Ryan's office? A. I don't know whose office they taken me into first, but they taken me into one room way down the hall, right as you got off the elevator, about the first, second or third room. I don't think that was Mr. Ryan's room.

Q. Did they tell you what you were being brought up for? A. They did not, sir.

Q. And then did you have a discussion with Mr. Ryan? A. Yes, sir.

Q. What did Mr. Ryan say to you? A. The first thing Mr. Ryan said when I went in his office, 1298
I seen Adolph Clark sitting there and so Adolph Clark looked up at me and he looked at Mr. Ryan and Mr. Ryan nodded his head to me. He said: "I am sorry, Stack," like that. I said: "Sorry for what?" Mr. Ryan said: "You know what he is talking about." I said: "I don't." He said: "You will know." He told me take off my coat, so I taken off my coat. Adolph Clark in the meantime, he told Adolph to walk out. That was the first time he told him, and see my left arm, so I showed him my left arm. So he looked at my left arm about fifteen minutes. So I got two little scars up here, vaccination, I think from childhood. So he asked me was they the gun shot wounds. I told him that they wasn't no gun 1299
shot wounds. He insisted they were. He looked at my arms, examined thoroughly. He still say they were gun shot wounds, because he didn't see any more on my arms.

The Court: Talk slowly, please.

The Witness: Then Mr. Ryan after that he got some pictures, the same pictures that

was here as evidence. He started reading them pictures to me. He said: "You remember this." I said: "I do not." He said: "Look at that store on them." So I looked at the pictures. He said: "You tell me your conscience not bothering you?" I said: "My conscience bother me something I don't know about?" I said: "I never see the picture before." He said: "Don't you remember another talk to your friend?" I said: "I do not." He started looking on my arm again. He started, told me what Louella Brown told
1301 him and Dupree. He called all the names. He asked me did I know him.

Q. Was there a Dr. Hochman in the office? A. Dr. Hochman didn't come in there till around—I was in there a good two hours before Dr. Hochman came in there.

Q. But he finally came in? A. He finally came in, correct.

Q. Was Mr. Ryan questioning you at length, is that correct? How long would you say he questioned you at that time? A. At that time Mr. Ryan questioned me just around thirty minutes.

Q. Then after he finished questioning you where did you go or what took place or who told you to
1302 go any place? A. The same three detectives that brought me up here, two of them I know to be exact, carried me back in that room again and that is the next room, the first room I had entered when I first came up there. They carried me in there and so one of them told me to sit down in a chair.

The Court: Just a minute. Answer questions. It is hard to follow the witness. Just answer the question "where did you go."

The Witness: In another room, sir.

Q. What happened in that room? A. Detective knocked me down on a chair, number one.

Q. What? A. Knocked me on the chair and another one kicked me in my stomach out of the chair.

Q. What else happened? A. They gave me the works.

The Court: Will you please talk slower? 1304

The Witness: They told me to tell the truth and I wouldn't get hurt. I told them I was telling the truth. So they hit me some more. They said: "You black son-of-a-bitch. I will kick you till you do tell the truth." He hit me again. My nose started to bleed. He told me about what happened to colored boys in The Bronx when they come up here in The Bronx and stick up; asked me, you know: "You are familiar with The Bronx," and all that. I told him I was not. I told him I didn't even know—they asked me about Webster Avenue. I told them I didn't know anything about Webster Avenue. 1305 So he promised me he would keep on continuously kicking me until I do remember Webster Avenue, so that went on, I won't say how long. It seemed like eternity, you know, and Mr. Ryan came back in.

Q. Into that room you were in? A. He came in that room then. When he came in that room he had his hands like that.

The Court: Just a minute. Conduct an examination.

Q. What did he say when he came into the room and what did you say? A. He asked me do I want to get it off my conscience. I told him I didn't have anything on my conscience.

Q. Then did he leave the room? A. No, sir. I had my undershirt on. He made me take my undershirt off then and he looked at my arm again and questioned me again and told me about all the witnesses, said I was the scene of the crime and so forth and so on. So then Mr. Foley came
1307 in. Mr. Foley started talking to me and Mr. Ryan and Mr. Foley got very disgusted right away and Mr. Foley said—he saw—"leave him alone for a minute" and walked out. The detective beat me some more, about five or ten minutes, and called me back in the other room. When I was in the other room I told him I had to go to the bathroom, so first they didn't want to let me go. Mr. Foley told him to let me go to the bathroom. So three of them take me to the bathroom. When I got in the bathroom and sit down on the toilet stool, one detective kicked me in the face and knocked me backwards. So the next one, who was on the stand here, Foden, he said:
1308 "I should drill the son-of-a-bitch and say he tried to jump out of the window in the bathroom," and a porter came there, a colored fellow, and they ran him out, chased him out. So after I got through, they let me use the stool then and say to me taking too long for me to get up. They carried me back. Mr. Ryan questioned me again and the doctor came in and he told the doctor to examine me.

Q. Dr. Hochman? A. Dr. Hochman. He examined my arm. He couldn't find anything on my arm and Dr. Hochman said and described here from vaccination; it is a puncture from a vaccination, the effects of it, the after effects of it. He said that was a bullet wound in my arm.

Q. How long did this go on from the time you arrived there at about six o'clock was that? A. Yes, sir, that was before six o'clock.

Q. And you say these detectives were taking you in and out and Mr. Ryan was coming in and out? A. Yes, sir.

Q. And they were doing those things to you, 1310
is that correct? A. Correct.

Q. And how long after that was it before they softened you up to the extent where you decided to——

Mr. Foley: I will object to that.

The Court: Objection sustained. That doesn't preclude you from examining properly.

Q. How long was it after you arrived at the District Attorney's office that you decided to give them what they wanted? A. It must have been four or five hours. That is the least.

Q. And that would be somewhere around nine 1311
o'clock? A. Around eight or nine o'clock.

Q. Eight or nine o'clock? A. Yes, sir.

Q. And from the time you arrived there until around eight or nine o'clock were you subjected to this treatment that you have testified to? A. I was.

Q. Now, during the course of time that you were in there, did you ask anyone for a lawyer?

A. I did, sir. That is right after Dr. Hochman said this scar on my arm was a bullet wound. Then they got Louella in there. So they asked Louella where on my arm I was hurt. So she taken my arm and showed them. So then Dr. Hochman, he looked at that and then Mr. Ryan asked me did I want to come clean about the whole thing. I asked him could I have an attorney or someone to tell me something. So he told me no at first. So he sat down; started questioning me some more and I told him the same, I give him the same answers. So then another man come in.
1313 I don't know if he is a detective, Assistant D. A. or what. Anyway he came in and Mr. Ryan, he get up from the chair and talk to him. What he said I don't know. So anyway another fellow came in, a detective; I seen him in there the first couple of days of the trial; he came in and he asked me could he speak to me alone. So they told him yes. He taken me in another room, an adjoining room. He told me he was an attorney and he told me to give him my story. He is my friend. He is going to help me. I told him: "I don't know anything about it." He asked me did I ever have that gun in my possession. I told him yes and I told him exactly what happened. He told me: "If you are smart; I am giving you
1314 this legal advice because I am an attorney; you will do exactly what they want you to do and save lots of headaches, because they will kill you in there if you try to run or do anything." So I told him, I said: "I am not going to admit nothing I didn't do," like that. And so that is when I asked him would he be my attorney for the trial. He said he probably would if I didn't have no money. So he told me to confess to all that and

he would get in there and explain to them and have the confessions thrown out altogether.

Q. This man who represented himself to be an attorney, you did see him after asking Mr. Ryan for a lawyer? A. Yes, sir.

Q. And you say you saw that man in this court? A. I did, sir.

Q. The first days of the trial? A. The first two or three days.

Q. Did you ever determine whether he was an attorney or whether he was a police officer? A. I thought all the time he was like that in the Magistrates' Court and they asked me up there how do I plead, all that. I was wondering where he was at. I went downstairs again. I asked the Detective Holt. I asked him. So he didn't say nothing. He smiled. Then the next time I really got hip to it. So when I was up here after I had pleaded and everything, they give me some papers to sign. They asked me, the Judge, Judge Stackell asked me did I have an attorney or money for Counsel. I told him no. So they assigned me you fellows. So they brought a paper and a ball pen to give me to sign. So I refuse to sign. Lots of those officers know I raised Cain about signing. I am through signing. I am supposed to have a lawyer and they knew, they told me I am stuck. I asked them if I could read it I would sign it if it was right. So I read it, so I seen there it was real legal advice, so I signed it. 1316 1317

Q. Now, you say after a period of about two hours or so of the treatment that you have testified to in the District Attorney's office, you saw this man that represened himself as an attorney, is that correct? A. I did, sir.

Q. And he advise you that if you didn't want to be killed to admit it? A. Yes, sir.

Q. And that was after you had been in and out of Mr. Ryan's office several times? A. A number of times.

Q. And then did you decide that you would give them a statement as they wanted? A. He showed me exactly where they are going to have the confession throwed out and I know at that time I didn't see all the evidence against me; it is their word against my word, so I believed the lawyer, especially when he told me he would prob-
1319 ably be my attorney if I didn't have money for counsel. Right then I know I didn't have no money for my counsel. Therefore I figured he would be my lawyer till the end of it and he would get on the stand and tell the people what he know. So I did sign.

Q. You have seen these pictures that were put in evidence here, did you not? A. I did, sir.

Q. And some of those pictures have your name on it, George Moore? A. Correct, sir.

Q. And other statements? A. Correct, sir.

Q. Did you sign those pictures in Mr. Ryan's office? A. I did sign them.

Q. Were you asked to sign those pictures? A. Was I asked? I was asked to sign them, yes.

1320 Q. Were you told to sign the pictures? A. I was told.

Q. And who told you to sign the pictures? A. Mr. Ryan told me to sign the pictures.

Q. And did he tell you what to put on them? A. He did.

Q. And did you do as you were told to do? A. Not at first, sir.

Q. But did you thereafter do as you were told to do? A. I did, sir.

Q. Now, you have also seen statements that were introduced in evidence here that were taken by a Stenographer and subsequently transcribed, and they have your name on the bottom of them? A. Yes, sir.

Q. Did you sign those statements? A. Transcribed like that, sir?

The Court: Do you want the exhibits?
Mr. Wilkinson: The exhibits, please.
The Court: The Clerk has them.

1322

Q. I show you People's Exhibits 25 and 26 and ask you if you signed those pages? A. I did, sir.

Q. At whose direction did you sign those? A. Mr. Ryan's, Assistant District Attorney.

Q. And there are errors or changes in the various pages of the statement? A. Yes, sir.

Q. Did you make those changes? A. I made those changes by direction, sir.

Q. Who directed you to make them? A. Mr. Ryan.

Q. And did Mr. Ryan call your attention to the places where he wanted you to change them? A. He did, sir.

Q. And did you change them as he directed you? A. I did, sir. 1323

Q. Now, these statements that appeared here and that I have just shown to you, did you read those statements or were they read to you? A. They was read to me, sir.

Q. Who read them to you? A. Mr. Ryan.

Q. Did you at any time read them? A. No, sir.

Q. Now, after those statements were read to you and signed by you, did you have any conversation with Mr. Foley? A. After all the confession and everything was signed?

Q. After everything was over. A. Yes, sir. I told Mr. Foley: "Now, I guess you fellows are finished where you left off." He asked me what do I mean by that. Some inspector was there. He said he was an inspector. He seemed like a nice fellow. He came in almost when I was signing all the confessions. So Mr. Foley, he asked me what did I mean by that. I told him
1325 they had finished me off. He said no, he would guarantee me no one else hit me and he told Mr. Holt and Detective Green not to let anyone else hit me. He told me he would be sure. When I went out in the hall, what started all that, I was coming from one room to another; a detective tripped me and hit me in the stomach. So Mr. Foley——

Mr. Foley: May we have a time of this blow in the stomach? Was this before or after the confessions were signed?

The Court: Yes, I will sustain it. Fix the time.

1326 Q. Well, do you know what time they finally finished with you in the District Attorney's office that night? A. I stayed in there all night, sir, till daybreak in the morning.

Q. Till daybreak? A. Yes, sir.

Q. Are you able to fix the exact time? A. Exact time must have been around six o'clock, because in the winter time it don't get light until six and it was light when I went out.

Q. What time did you have this conversation with Mr. Foley? A. Just a little bit before I left.

Q. That would be around daybreak, is that correct? A. Correct.

Q. And did you tell him what they had done to you? A. They knew what they had done to me.

Mr. Foley: I object.

The Court: Sustained; strike it out.

Mr. Foley: I would like the question answered, please.

The Court: Answer the question.

1328

Q. Did you tell him about your fears?

Mr. Foley: The question is unanswered?

The Court: Repeat the question.

(The Court Reporter reads question as follows:

"Q. And did you tell him what they had done to you?")

The Court: Answer the question. Did you tell him?

The Witness: No.

Q. Did you tell him about your fears? A. I did.

1329

Q. And what did you tell him? A. I told him I know they had finished me off because they got everything they wanted to get.

Q. And were you still afraid when you told him that? A. Of course I was, but he promised they wouldn't touch me.

Q. And did he say anything to anybody at that time, any officer? A. Yes, sir, this particular offi-

cer what did that. Mr. Foley talked to Mr. Ryan and Mr. Ryan told him no detective, no D. A., I don't know who; he told him anyway, he asked the officer how long he had been on duty. The officer said thirty hours, if I am not mistaken. He told him: "What are you to be on, thirty more?" Mr. Ryan told another detective to tell him to go out in some other precinct and report or do something like that.

Mr. Wilkinson: Your witness, Mr. Foley.

Cross-examination by Mr. Foley.

1331

Q. Moore, what time did you tell Counsel you got to the District Attorney's office on February 7th? A. Between four-thirty and five o'clock.

Q. Didn't you say to your lawyer just a moment ago that the officers got you at three-thirty p. m. and brought you to The Bronx? A. I did not.

Q. You didn't say that? A. No, sir.

Q. What time did you get here? A. I said they feed down the Tombs from three forty-five, quarter to four.

Q. What time did you get here? A. To the D. A.'s, to your office after that?

Q. That's right. A. From four thirty to five

1332 o'clock, five fifteen, somewhere around there. It was before six o'clock; I am definitely sure of that.

Q. Well, would it refresh your recollection if I were to suggest that you checked out of the Tombs at twenty minutes past five? A. It wouldn't check my recollection, no, sir. I didn't know the time.

Q. You don't know the time? A. All I know what time we eat down there.

Q. When the officers got you, you were in the Tombs, weren't you? A. I was.

Q. Did you commit a robbery in 1941? A. I did not.

Q. What? A. I did not.

Q. Did you commit an assault in 1921? A. I plead guilty to assault. You know about that as much as I do. Ordered Joe Baltimore and Joe Brown, in other words. I did five years. You know that.

Q. Just a minute, please. My question of you was, did you commit an assault? A. I did not.

Q. You didn't? A. I did not. 1334

Q. But you pleaded guilty to it? A. I pleaded guilty, yes, sir.

Q. Did you go away for it? A. I did.

Q. To Sing Sing? A. Wrong.

Q. Where did you go? A. I went to Elmira.

Q. When were you released? A. I was released December 1st, 1942.

Q. In 1943— A. 1942, sir.

Q. In 1943 did you have a violation of parole? A. I did.

Q. What was that? A. That was an assault.

Q. What with? A. With my hand and a chair. That is what it says.

Q. With your hand and a chair? A. Yes, sir.

Q. When the officers took you in custody they 1335 found you in the Tombs? A. Yes, sir.

Q. And they brought you here? A. Correct.

Q. Now, when you got to The Bronx you went to some room, you say, other than Mr. Ryan's? A. Yes, sir.

Q. And you went from that room into Mr. Ryan's and back again from time to time? A. Correct, sir.

Q. In your first interview with Mr. Ryan you denied all knowledge of this murder of Detective Burke? A. I did, sir.

Q. When you were taken from his room on that occasion you were beaten, slugged and kicked? A. I was, sir.

Q. And that was by the same three men who brought you to The Bronx? A. They carried me back and there was more detectives than them on me. One of them brought me up there didn't touch me.

Q. What? A. I don't know his name.

1337 Q. Some of those that brought you up did help beat you? A. They were in the room.

Q. Did they help to beat you? A. I don't think so, sir.

Q. You were there yourself, weren't you? A. Yes, sir.

Q. You know the three officers that took you from the Tombs? A. By face.

Q. You rode all the way up with them? A. I did.

Q. They had you in charge all evening? A. I was in charge of a hundred detectives in your office all evening, sir.

Q. Those three men were always there, weren't they? A. No, sir, not always, no, sir.

1338 Q. Every time you left the room didn't these three men accompany you? A. The first time I am sure, sir.

Q. Didn't they always accompany you every other time? A. I don't think so, sir.

Q. Do you know whether they are police detectives or county detectives? A. I do not know that.

Q. Do you know whether they were the three men who were charged with responsibility for

you? A. That is natural because they brought me up. They must be charged.

Q. And they stayed with you at all times? A. No, sir. I know better than that.

Q. Did you ever leave Mr. Ryan's room at all, Moore, with the three county detectives who brought you up? A. The three who brought me from downtown always carry me in the other room, sir.

Q. Did any of the three who brought you up beat you? A. One of them pushed me in a chair, I know.

Q. Which one was it, do you know? A. No, 1340
I do not.

Q. Would you know the men if you saw them? A. Oh, of course.

Q. And you would know which one struck you, wouldn't you? A. Of course.

Q. And how many times did he strike you? A. One particular fellow strike me?

Q. Yes. A. When I fall on the floor I felt so many pains, one particular officer struck me.

Q. That is one of these three we are talking about? A. I know the ones you are talking about.

Q The three who brought you up? A. Yes.

Q. Did he strike you? A. He pushed me in a chair, sir.

Q. Did he strike you? A. He did. 1341

Q. Did he kick you? A. No, sir, I don't think he did.

Q. How many times did he strike you? A. Once, sir.

Q. Where did he hit you? A. In the nose.

Q. He punched you in the nose and knocked you into a chair? A. He did, sir.

Q. And you will be able to pick him out when you see him? A. Of course I will.

Q. Now, the officers who were with you that night you have seen from time to time around the court here, haven't you? A. I beg your pardon, sir?

Q. The officers, the other officers, the police officers who were there with you that night, you have seen from time to time around the court here, haven't you? A. Never forget them.

Q. You will never forget them? A. No, I can't forget them.

1343 Q. They are the ones who beat and kicked you a great number of times? A. Not all of them I have seen in here.

Q. But some of those who have been here did beat you and kick you? A. Of course.

Q. And you will be able to pick them out? A. I will.

Q. Do you know their names? A. No.

Q. Well, how about Dinan: was he one? A. I do not know their names.

Q. He was on the stand here. A. Dinan?

Q. Yes. A. I don't recall.

Q. Did Sergeant Hess beat you? A. Is that the uniformed policeman?

Q. Yes. A. Oh, no, sir; no uniformed.

1344 Q. How about Detective Foden? A. Yes, sir, that is the short one.

Q. He beat you? A. He is in the back now.

Q. That's right, and where did he beat you? A. He kicked me in the stomach. He taken out his gun. I was in the bathroom. He told me: "Go ahead; jump out the window." He will shoot me.

Q. And how about Holt? A. Holt? Yes, sir. He kicked me.

Q. Holt did too? A. He did.

Q. And that was on the occasion of your first leaving Mr. Ryan's room and going down the hall, is that correct? A. My first occasion?

Q. Yes. A. I don't know the first occasion, the second occasion or third occasion. I was beaten two or three times, sir.

Q. Well, was Holt in on your first beating? A. I don't know. I wouldn't say definitely.

Q. You don't remember that? A. Oh, yes, I remember that I was in there and I was beaten, 1346
but who beat me I don't know. I picked them all out when I was sitting down at the D. A.'s office, I know. I was looking at each one of them.

Q. Well, was Holt one of them? A. He was one that beat me at times, yes, sir.

Q. I am talking now about the first time. A. I told you I don't know about the first time.

Q. Well, was Foden one who helped beat you the first time? A. The first time, no, sir, no.

Q. Do you know what time it was when you got a beating from Holt; can you fix the time? A. I do not. I can't fix the time. I lost track of time after I came in there.

Q. Well, your first confession, it has been tes-
tified to here was begun at eight forty-two, very 1347
nearly a quarter to nine. Did anybody beat you after you made a confession? A. After I made the first confession?

Q. Yes. A. I was kicked out of the chair once.

Q. In Mr. Ryan's room? A. By Mr. Ryan.

Q. By Mr. Ryan? A. By Mr. Ryan, yes, sir.

Q. Mr. Ryan kicked you out of the chair? A. Yes, sir.

Q. Was I present at the time? A. That is when you came in. You told him about the second confession and he told me, I remember, why didn't I do what they told me to. I signed one confession. Why not make another one? It won't hurt me no more than the first one will help me.

Q. And Ryan himself kicked you out of the chair? A. He did.

Q. He didn't get a police officer to do it? A. No, he didn't. He got angry with me. He said I was stupid. That is when he asked me how far I went to school.

1349 Q. Was the Police Commissioner there at the time? A. The Police Commissioner? I don't know if he was there at the time or not, sir.

Q. Well, wasn't the Police Commissioner sitting there from the time you finished your first confession until you began your second one? A. I know he was in there.

Q. Wasn't I sitting, talking with him across the desk from you? A. While I was making the confession?

Q. No, between the two. A. Between the two?

Q. Yes. A. I don't recall. I know he was in there. What time he came in I don't know, sir. I know during the confession, I think.

1350 Q. Was I in there while Mr. Ryan kicked you out of the chair? A. You came in there just a split second before and that's when you were talking to him.

Q. I was in there then? A. I wouldn't say you were right in there, sir. I would not say that.

Q. Did you say I got in a second before it happened? A. You got in there and talked to him. I don't know what the conversation was about.

Q. And then after I had spoken to— A. After your conversation, Mr. Ryan, he started telling me about a second confession.

Q. Then he kicked you? A. Yes, sir.

Q. I was there then? A. You said you were there. I am not saying. I told you I didn't know.

Q. You said I had been in, talking to Mr. Ryan. A. I don't know if you went back out of the room. I don't know. I know you had walked in the door when you talked to Mr. Ryan. Mr. Ryan got angry when I told him it was his confession, it wasn't mine.

Q. Did you tell him that in my presence? A. 1352
I told him. You all heard me say that, sir.

Q. Well, the confession that you made, you only made because you were beaten, isn't that right? A. That is one of the reasons.

Q. And there is no truth in it, is there? A. In what, sir?

Q. In your confession. A. No, sir. Just about the gun. I gave the gun to Adolph Clark. I had the gun in my possession. That is the truth.

Q. You didn't state in your confession that you gave the gun to Adolph Clark; in your confession you said you gave it to Haughton, isn't that so? A. I said what I was told to say.

Q. Mr. Ryan told you to say you gave it to 1353
Haughton, is that right? A. Yes, sir.

Q. And that is why you put it in there? A. Yes, sir.

Q. And how did Mr. Ryan describe Haughton to you when he wanted you to put him in the confession; what name did he use? A. He said the other boy. He say saying Ray. He asked me did I know Ray.

1354

Q. Yes. A. I told him I knew three Rays and he asked me where was he at. So I started, I told him one was on the east side. He asked me did I know this particular Ray around Eighth Avenue, around the pool room. I told him I did.

Mr. Fleischman: If your Honor pleases, I object to any conversation that this defendant had as to Ray not in his presence and ask the jury to be instructed that they disregard it as not being binding.

The Court: It is hard for me to follow him. I will so instruct them to save time.

1355

Proceed.

The Witness: So when he showed me the picture, he asked me——

The Court: I wish you would talk slower, please.

The Witness: I am sorry, sir. When he showed me the picture he asked me: "Is this the Ray?"

Mr. Fleischman: If your Honor pleases, I renew my objection again at this time.

The Court: Sustained.

Q. Well, did— A. Proceed?

Q. No, I guess not. The Judge has sustained

1356

the objection. Did Mr. Ryan tell you what name to put in the confession, who the other man was? A. I would not tell him; that I can't say who was the other name. He asked me about Ray.

Q. Wait a minute now. A. I told him no.

The Court: Just a minute, please.

Q. Did Mr. Ryan tell you what name to put in? A. He did, sir.

Q. And the name that he gave you was Ray Haughton, is that correct? A. He said Ray.

Q. Did he tell you where he lived? A. Did he tell me where he lived?

Q. Yes. Did Mr. Ryan tell you where he lived? A. He told me, yes, sir. He told me where he lived. He told me: "Did he stay on 135th Street and Eighth Avenue?" I told him I didn't know, which I didn't know.

Q. When Mr. Ryan told you, you didn't know anything about the appearance of this store, did you? A. No, sir.

Q. You have never been in it? A. Of course not. 1358

Q. And Mr. Ryan gave you all the information about how it looked that you put in your confession, isn't that true? A. With the help of all the witnesses.

Q. What other witnesses? A. That is Louella Brown. That is Joe Brown.

Q. Just a minute. Let's take one at a time. Did Louella Brown tell you anything about the appearance of Ray's liquor store? A. No, sir.

Q. Did Joe tell you anything about it? A. No, sir.

Q. Well, who told you about Ray's liquor store so that you could describe it? A. I did not describe it. 1359

Mr. Foley: May I have a moment, your Honor?

The Court: Sure.

Q. While Mr. Ryan was talking to you in the presence of the Stenographer, Moore, did he show you that picture? A. I think he did, sir.

Q. And did he tell you it was Ray's liquor store? A. He did, sir.

Q. And did he tell you how it looked on the night of the 13th of December? A. He showed me the pictures.

Q. You didn't know anything about it yourself, did you? A. It was impossible for me to know until I looked.

Q. Did you with this picture in your hand, People's Exhibit 3, say to Mr. Ryan: "I will tell you what I remember about this picture. I don't remember Detective Burke lying there on the
1361 floor. I remember the counter, the partition that the boxes made or the cartons and the bunch of bottles on the right-hand side where I was standing;" did you make that answer as recorded here? A. Never, sir.

Q. You never made the answer? A. No, sir.

Q. Well, weren't you making the answers that Mr. Ryan wanted you to make? A. Was I making the answers he wanted me to make?

Q. Yes, sir. A. Yes, sir. Lots of them he told me I wouldn't know nohow and the ones he told me not to sign.

Q. Did he tell you that answer? A. Did he tell me that answer?

Q. Yes. A. Repeat the question over again,
1362 would you mind?

Q. Very gladly. This is you speaking to Mr. Ryan with this picture, People's Exhibit 3, in your hand. A. I seen the picture.

Q. I would like to have it before you. A. Yes.

Q. Answer:

Mr. Foley: This is on page fifteen, gentlemen.

Mr. Fleischman: We don't have any copies, Mr. Foley.

Mr. Foley: You have it in your daily record.

Mr. Wilkinson: Page fifteen of the daily record?

Mr. Foley: No. Page fifteen of the confession in the daily record, Moore's first confession.

Q. Answer:

Mr. McDonough: We haven't found it yet.

Mr. Foley: I will wait. 1364

Q. Answer: "I will tell you what I remember about this picture. I don't remember Detective Burke lying there on the floor. I remember the counter, the partition that the boxes made or the cartons and the bunch of bottles on the right-hand side where I was standing." Did Mr. Ryan give you that answer? A. I don't remember that question. It was impossible for me to say that.

Q. You don't know whether you made it or not? A. At no time I said that.

Q. Well, did you say to Mr. Ryan as you looked at that picture that you didn't remember Detective Burke lying on the floor? A. At no time. I don't remember none of the pictures. 1365

Q. Did you say that to Mr. Ryan: "I don't remember Detective Burke lying on the floor"? A. I did not specify one picture, sir, at no time.

Q. I am talking— A. He did the specifying.

Q. Mr. Ryan told you to say that you didn't remember Burke on the floor? A. There is lots of things he told me.

Q. Please answer my question.

The Court: Pay attention to the question and answer it.

Q. Mr. Ryan told you to say that you didn't remember Burke lying on the floor? A. If I said that, Mr. Ryan told me to say that.

Q. Mr. Ryan told you to say you didn't see Burke? A. You say I said that. If I said that Mr. Ryan told me to say that.

Q. Did Mr. Ryan tell you to say that you remembered the small barricade of boxes or cartons?
1367 A. Did he ask me?

Q. Did he tell you to say that? A. Did he tell me to say that, sir?

Q. Yes. A. I don't remember if he did or not, sir.

Q. But Mr. Ryan did tell you to say that you didn't remember Burke lying on the floor as depicted in— A. I remember most of those pictures.

The Court: Pay attention to the questions.

Q. Mr. Ryan is the one who told you to say you didn't remember Burke lying on the floor? A. If I said that, he told me, he instructed me.
1368 Q. And that is the only reason you said it? A. I didn't even say it, sir.

Q. Well, do you remember any of the questions that were asked of you and any of the answers that you made? A. Any of the questions?

Q. Do you remember any of them, yes, that were taken down by the Stenographer and read here yesterday? A. I remember a few of them.

Q. Well, did Mr. Ryan ask you: "What is your full name?" A. He did.

Q. And did you say: "George Cornelius Moore"? A. I told him "George Moore." He put the "Cornelius" in.

Q. Mr. Ryan put the Cornelius? A. He asked me did I have a middle name.

Q. Who told him your name was Cornelius? A. I imagine one of the witnesses.

Q. Did he ask you "Where do you live?" A. He did.

Q. And did you say: "241 West 135th Street"? A. I did.

1370

Q. Was that the truth? A. Yes.

Q. Did he ask you: "You live there with whom?" and did you say: "I was living with a boy named Adolph Clark"? A. That is correct.

Q. Was it the truth? A. Yes, that was the truth.

Q. Did he ask you: "Is that a furnished room?" and did you say: "It is"? A. I did.

Q. And that was the truth? A. It was.

Q. Did he ask you: "What's the apartment number?" and did you answer: "There is nothing on the door; I really don't know"? A. I told him I didn't know the apartment number. He thought I was being smart, sir.

1371

Q. Was that question asked of you? A. It was.

Q. And did you make that answer? A. It was.

Q. Was that the truth? A. It was.

Q. Did he ask you: "How long have you been there?" and did you say: "About, approximately three weeks"? A. I did.

Q. You were asked that question and you made that answer? A. True.

Q. He asked you or did he ask you: "Do you remember Friday, December 13th, 1946?" and did you answer: "I do"? A. Yes, sir.

Q. Was it the truth? A. It was the truth. I remember that.

Q. Then he asked you—did he ask you: "Were you in The Bronx that day?" and did you answer: "I was"? A. On the confession, yes, sir.

Q. Was it the truth? A. It was not.

Q. And that was the first answer that we have come to that Mr. Ryan dictated to you? A. Correct.

1373 Q. And as you sat there——

The Court: Did you make the answer "I was"?

The Witness: He told me; he instructed me.

Mr. Foley: He said yes, sir, that that question was asked and the answer made.

The Court: All right.

Q. That was the first answer that Mr. Ryan dictated to you, is that right? A. No. He had been dictating to me all afternoon after the lawyer got through with me.

Q. I mean of those I have read to you, that was
1374 the first one Ryan dictated, wasn't it? A. Of course.

Q. Thank you. Now, were you sitting during this examination by Mr. Ryan? A. I was.

Q. Was Mr. Ryan in the swivel chair back of his desk? A. At one time, sir.

Q. While he was asking the questions, was he there when he started to ask them, those that I am reading to you? A. Some of the questions

he was sitting on the side of the desk and I was sitting on the side of the desk.

Q. But he wasn't very far from you, was he? A. No, sir.

Q. And was the Stenographer sitting right next to you? A. After I saw him make them statements he was. He was sitting more close than Mr. Ryan, sitting on my left. I was sitting on his left.

Q. This question I have read to you: "Were you in The Bronx that day?" to which the answer is, "I was"; that was the first answer that Mr. Ryan dictated to you of these questions and answers, isn't that right? A. Yes. 1376

Q. Now, with you sitting alongside the corner of the desk and Mr. Ryan some times on the desk and some times in his chair and the Stenographer, I take it, between you— A. Yes, sir.

Q. —how would Mr. Ryan get the answer "I was" on the record? Did he say: "Now, Moore, don't say anything. I will tell the Stenographer what to put down," or did he say to you: "Geoge, you say 'I was'"? How was it done? A. I will tell you how it was.

Q. Yes, please. A. Before the Stenographer came in Mr. Ryan asked me a question like this, he asked me: "Do you remember the day on December 13th, Friday, December 13th?" I said: 1377 "I do." That was before the Stenographer come in. Then he asked me: "Was you in The Bronx December 13th?" I said: "No." See. I would say no. Now, when Mr. Ryan, after I had come out of the room with my attorney, that supposed to be attorney, I don't know if he is one or not, he told me, he asked me all the questions.

Q. What questions? A. Asked me do I remember.

Q. Who asked you questions? A. Mr. Ryan was asking me the questions.

Q. What questions did he ask you? A. He asked me do I remember that day. I said I did, I remember the date. That was the truth. He asked me was I in The Bronx and I said no.

Q. What I want—just a minute. A. He said at first——

Mr. Wilkinson: Mr. Foley asked the witness to explain. I think the witness should
1379 be permitted to explain.

The Court: He is entitled to have his cross-examination.

Mr. Wilkinson: He asked the witness to explain.

The Court: The examination is proper.

Mr. Wilkinson: I respectfully except.

The Court: Proceed.

Q. When the Stenographer was present and Mr. Ryan asked you the question "And were you in The Bronx that day," how did he get the answer "I was" on the record; did he speak to the Stenographer or did he speak to you? A. He had
1380 told me to answer all his questions. The lawyer told me to answer all his questions like he wanted me to answer and before the Stenographer went in there he went over with me, which you know that lots of questions he asked me, this and that and he said: "And you remember, I will tell you, where you were." On the condition I did exactly that, sir.

Q. And all of the things that were in there that might implicate you in this crime were things that Mr. Ryan taught you? A. Taught me if you want to call it that, sir.

Q. You didn't know them? What I want to know— A. I know it was a lie.

Q. It was a lie? A. Yes.

Q. And Mr. Ryan dictated it and taught it to you? A. Yes. That is his confession.

Q. That is Mr. Ryan's confession? A. Right.

Q. And he went over all the questions with you and gave you the answers, is that correct? A. No. I don't say he went over all no questions, no. 1382
That was understood I was supposed to follow him and lots of times he helped out the Stenographer and told him what to say.

Q. That is what I want to know, Moore. I want to know did you have them all memorized before the Stenographer came in or did Mr. Ryan have to help you? A. No, he had to stop a number of times.

Q. Did he tell the Stenographer what to put down or did he tell you? A. No, he didn't tell the Stenographer what to put down. He would hold up the Stenographer. That is all.

Q. And after those first few questions about where you live and so on, when it got to where you were in The Bronx, and what time you came 1383
there, how you came there, who was with you; all of the answers to those things were given to you by Mr. Ryan? A. Mr. Ryan, Adolph and all of them there telling me who was with me and how I came there.

Q. Just a minute. Was Adolph telling— A. So we took that condition.

Q. Did Adolph tell you what answers to make? A. No. He had told the D. A. all that in front of me.

Q. All of the answers you made, Mr. Moore, were told to you by Mr. Ryan, weren't they? A. Of course.

Q. And the language that was used in the answers was Mr. Ryan's language? A. I don't quite follow you there.

Q. Well, the ideas and the answers were Mr. Ryan's ideas? A. They were.

Q. And the language that was used was Mr. Ryan's? A. They were.

1385 Q. Did Mr. Ryan tell you where you met Haughton that day? A. He did, positively.

Q. And it was Mr. Ryan who told you that in company with Clark you and Haughton started for The Bronx, didn't he? A. Adolph told him that and Mr. Ryan told me that, sir.

Q. Mr. Ryan told you, didn't he? A. Yes, he told me.

Q. Did Adolph tell you? A. No. He was telling Mr. Ryan.

Q. Did he tell him in your presence? A. At one time.

Q. Did Mr. Ryan tell you on what subway you came up? A. He didn't know himself and he

1386 said Eighth or Sixth Avenue, because I had never been in The Bronx on that side. I had been on the Concourse before.

Q. Mr. Ryan didn't tell you what subway, did he? A. He did.

Q. Which one did he tell you? A. He said it must have been Eighth Avenue or Sixth Avenue from 35th Street.

Q. Mr. Ryan said it that way and then you gave that to the Stenographer? A. Yes, sir.

Q. He didn't insist that it be the Eighth or Sixth when he was picking one out? A. He didn't know one.

Q. Pardon me? A. If anyone insist in the confession, did he? I would say either one of the subways.

Q. He didn't insist on your coming up in the Eighth Avenue, did he? A. How do you mean?

Q. Did he say it had to be the Eighth? A. No. He said the Sixth or Eighth Avenue.

Q. He let you have a choice. Mr. Ryan, I suppose you know, lives in The Bronx? A. I don't know where he lives. It is immaterial to me, sir. 1388

Q. Well, you heard him say he has been the Chief Assistant in this office for fourteen years? A. I rode in the subway all over New York myself, sir.

Q. Did you ride it up to The Bronx? A. I have been to The Bronx before.

Q. By subway? A. I have.

Q. Which one would you use coming up from 135th Street to stick up Ray's liquor store? A. That didn't happen, sir.

Q. I say which one would you use? A. If I was coming up to Webster Avenue store, is that what you mean? 1389

Q. Yes, sir. A. I don't know where Webster was there.

Q. Do you know now? A. I do not.

Q. If you were coming to the Concourse which subway would you use? A. I could use the Seventh Avenue subway.

Q. The Seventh Avenue subway? A. That's right, get off 149th Street and Grand Concourse. I used to work right up there in that vicinity.

Q. How long ago was it you worked in The Bronx? A. That was in forty-three.

Q. Where did you work? A. I worked for some kind of concern up there, making metal drums for the Navy.

Q. Do you know their name? A. No, I forgot, sir.

Q. What street was it on? A. It was—I used to get off 149th Street, I know, and there was
1391 a school. I used to walk past the school.

Q. What street was it on? A. I don't know the street.

Q. How long had you worked there? A. I don't know. I really don't know. That can be two or three months. I don't know. I remember I was on parole then. It is in the record where I was working. The Parole Officer got it anyhow.

Q. Now, did Mr. Ryan tell you that you were familiar with The Bronx? A. At one time.

Q. Pardon me? A. At one time he asked me was I familiar with The Bronx.

Q. And what did you say? A. I told him no.

Q. Well, did he tell you you had to be, to be in on this crime? A. He told me that I had to
1392 be, yes.

Q. And when he asked you the question and you made the answer, did you then say you were familiar with The Bronx? A. That is when he stopped the Stenographer and told me how I am supposed to go out what street and what street I was supposed to be and then he said no, he won't name the street. He said won't name the street.

Q. Who said? A. I wasn't supposed to know the name of the street.

Q. Just a minute. When we first come to the question of being familiar with The Bronx, you really are not? A. I am not.

Q. Did Mr. Ryan tell you to say that you were?

The Court: Just yes or no.

A. No. At first——

The Court: You said it was yes. Now you say no. Which is it?

The Witness: On the confession. 1394

The Court: I am not asking that. All right, go ahead, Mr. Foley.

Q. Did Mr. Ryan tell you you were familiar with The Bronx? A. At one time he did.

Q. What were your instructions about that point when the confession was begun; were you supposed to be familiar with The Bronx or ont? A. That is when I kept telling him I wasn't. He told me I was and after——

Q. Just a minute.

Mr. Wilkinson: I object to this. I think the witness should be permitted; he asked what were your instructions; the witness 1395 should be permitted to testify.

The Court: The witness is not answering questions. Overruled.

Mr. Wilkinson: May we have the question, please?

The Court: Let us proceed.

Mr. Wilkinson: I respectfully except to the decision of the Court.

The Court: Pay attention——

The Witness: He wanted to know the conversation.

The Court: Pay attention to the questions asked and answer the questions directly.

The Witness: If I can I will.

Q. If you don't understand I will repeat for you. A. Yes, please.

Q. At the time the confession was begun were you told by Mr. Ryan to say you were familiar with The Bronx or not?

1397 Mr. Wilkinson: I object to that as already answered.

The Court: Overruled.

Mr. Wilkinson: It is the third time. Exception.

A. At one time he did.

Q. At the time the confession was begun were you told by Mr. Ryan you were familiar with The Bronx? A. At one time.

Q. What time; at the time the confession was begun? Don't you understand? A. When the Stenographer was writing down.

1398 Mr. Wilkinson: At which time, on which confession?

The Court: All right, specify.

The Witness: It was supposed to be understood.

Q. I will refer to People's Exhibit 25, the statement taken at eight forty-two p. m. on the evening of February 7th, 1947 in Mr. Ryan's office. We

are up to page three. Now, at the time that this statement was taken, your first confession— A. Yes.

Q. —what did Mr. Ryan tell you about your knowing The Bronx? Were you to say you were familiar with it or not?

Mr. Wilkinson: I object to the form of the question.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. Can you remember the question now? A. I don't remember the question. I remember 1400
exactly what was said. The way you asked me that I couldn't say yes or no on that.

Q. Well, did Mr. Ryan change his stand on your familiarity with The Bronx during the same statement? A. I told you he did. That is when he held up the Stenographer. It was supposed to be understood I wasn't supposed to be familiar with The Bronx, so naturally I had to put that down. I wasn't supposed to be familiar with The Bronx. He told me to turn right, left, this and that and that is what I said.

Q. Now, Mr. Ryan showed you the picture of the outside of the store, didn't he? A. He showed me all the pictures. 1401

Q. This is People's Exhibit 7. Will you read what you wrote on that exhibit? A. I will. "George Moore, February 7th, 1947, I entered this liquor store on December 13th, 1946 about six fifteen or six thirty o'clock. Period."

Q. You wrote that at Mr. Ryan's direction, didn't you? A. I did.

1402 Q. He not only directed you to write on it, he told you what to write on it, didn't he? A. He told me to say I entered the liquor store and put the time there.

Q. Did he give you the time too? A. He did.

Q. Six fifteen or six thirty? A. Yes.

Q. Have you heard the testimony here that this murder must have occurred about six o'clock in the evening? A. Yes, I heard that.

Q. And that was December 13th that it happened, wasn't it? A. On the stand, that is what I heard.

1403 Q. And you were being question on February 7th, is that right? A. That's correct.

Q. And Mr. Ryan was having you state as a matter of evidence that you were entering the store between quarter past and halfpast six on that night? A. He told me; he directed the time.

Q. He gave you that time? A. It was understood he didn't want it to be exact himself, you know.

Q. What was that? A. It could have been understood Mr. Ryan didn't want it to be exact.

Q. It could be understood? A. Yes.

Q. Oh, you are speculating on the operation of Mr. Ryan's mind? A. Yes.

1404 Mr. Wilkinson: I object to that as argumentative.

The Court: Overruled.

Mr. Wilkinson: Not a proper question.

Q. Is that right? A. Just as lots of things happened there.

The Court: Pay attention to the question. Answer the question.

Mr. Wilkinson: I think the question is being answered by the witness.

The Court: Repeat the question and answer.

(The Court Reporter reads question and answer as follows: "Q. Oh, you are speculating on the operation of Mr. Ryan's mind? A. Yes.")

The Witness: I am no mind reader.

Q. Pardon? A. I am no mind reader.

Q. Well, did Mr. Ryan, as he said, offer you the statement for correction that you might want to make or did he tell you what corrections to make? A. He read them all and told me. 1406

Q. Told you what? A. Told me the corrections to make.

Q. But you didn't make any yourself? A. He made a joke out of it.

Q. Pardon? A. He made a joke out of it. He said the Stenographer had it this way, this way. It didn't sound right. He said: "Does it sound right to you, Moore?" I told him I didn't know.

Q. But you made corrections that Mr. Ryan directed you to, didn't you? A. Of course I did.

Q. You didn't make any yourself? A. Not one, no.

Q. Not one? A. Not one. 1407

Q. Well now, I want to read you a question and answer. It concerns the alleged conversation between you and the other man before you entered the store. Was this question asked of you: "What was the conversation you two had?" and did you make this answer: "The conversation was that I told him first, I asked him are you back there, what are you back there for and are

the girls easy and he said yes. I was not intending about raping them and he said yes. Then I told him I came up because it was the 13th to bullshit around and I said I wanted to go back and try and win some money in poker and we came to Webster Avenue. We came down there and he said go on and I had the thing on me and that was the first time I said it didn't look right and he said let's go in and I walked by and walked to the corner and I said no and he said he was going in and I said, fuck it, I am going in too. I have got nothing for Christmas and I went in."

1409 Did Mr. Ryan dictate that answer to you? A. He did.

Q. And did he use that language? A. He did about the bullshitting.

Q. Than was Ryan's language? A. Yes, because he was making this statement "you are bullshitting around" and about the rape also. So I told him: "Be sure to put it down; you haven't enough. You will have me in for another charge of rape." He said: "No, we will straighten that out."

Q. He had you in for murder and he was talking about charging you with rape? A. No, I did not say that.

Q. But this was his dictation, wasn't it? A.

1410 It was.

Q. This imaginary conversation between you and the other hold-up man? A. It was.

Q. That was Ryan's idea? A. It was.

Q. And you made, you have crossed nothing out yourself, not one word, you said; do you remember crossing out and initialing about forty words in that answer? A. Do you want me to read the answer?

Q. No; just look at it? A. Yes.

Q. You may read it if you wish. A. "The conversation was that I was asked——

Q. I did not mean read it aloud. I thought you wanted to read it to see what was in it. A. No.

Q. Did you cross out—let me have the original, please. A. What crossing out was, I crossed out, yes.

Q. Here is the actual copy. This is a red ink copy for— A. I don't need to read it to know I crossed it out.

Q. I just wanted you to look at what is crossed out. A. That was crossed out. I crossed it out. 1412

Q. On People's Exhibit 25, look at it and see whether anybody has crossed out more since you last saw it or if you crossed it all out. A. I don't know what I did or crossed out. I won't say no one else crossed out anything since then.

Q. Do you find anything crossed out that doesn't bear your initials? A. Here?

Q. Yes. A. I see my initials here. It is crossed out. I don't see none here. I don't see none here. Do you see any there?

Q. No. A. I have pretty good eyes, sir. I see my initials here at the cross out. I don't see no initials here and I don't see no initials there. Do you see any there? I don't see any here.

Q. Did you put that word in there? A. I did. 1413 That is my handwriting.

The Court: Wait a minute, please. The record is not going to show this and the Jury can't understand it.

Q. The word we just discussed was the word "what" crossed out.

The Court: Did you make the corrections there, whether you put your initials on them or not?

The Witness: I crossed out the words, yes, sir.

The Court: All right, proceed.

Q. The sentence that reads "I was not intending about raping", did you cross out "about" and put "to" there? A. Where is that?

Q. Down there. A. "I was not intending to raping them."

1415 The Court: Did you make that correction? Yes or no.

The Witness: Yes, I made all them corrections. I know that.

Q. Well, it read originally as you have just seen "I was intending about raping". Did Mr. Ryan tell you to cross out the word "about" and put the word "to" in there? A. Yes, sir.

Q. So that it now reads "I was not intending to raping". A. "To raping".

Q. Mr. Ryan told you to do that? A. Of course. All the crossing out I was instructed to cross out.

1416 Q. Now, before ever Mr. Ryan called a Stenographer in he told you that you were to say that you came to The Bronx, armed with a gun? A. Yes.

Q. In company with Haughton? A. Yes.

Q. That you stuck the place up? A. Yes.

Q. And that you shot the officer? A. Yes.

Q. That was before he ever brought a Stenographer into the room at all? A. Of course.

Q. Well, did you say in your first statement that you had the gun and you shot the officer? A. I did not.

Q. Weren't you telling what Mr. Ryan dictated? A. On the confession I said it, yes.

Q. On your first confession you said you had the gun? A. My first confession?

Q. Yes. A. I have heard the evidence here and I know better than that, sir.

Q. I am asking you not about the evidence here. I am asking you, didn't you in your first confession deny that you had a gun? A. Of course. I heard that on the stand, yes, sir. 1418

Q. I am asking you— A. Yes, sir.

Q. —did you deny it? A. Yes.

Q. Although Mr. Ryan told you you had shot and killed Burke, you denied it in your first confession, didn't you? A. Yes.

Q. Weren't you saying through fear everything that was dictated to you? A. There is lot of that Mr. Ryan told me for my way. When you came in, that is why I made a second confession, after you got talking to him.

Q. Weren't you making this first confession because you were afraid you would be beaten to death? A. Of course, sir.

Q. And weren't you supposed to follow Mr. Ryan's suggestion and say that you shot the 1419 officer? A. I did follow him.

Q. But you didn't say you shot him in your first confession, did you? A. He did not instruct me to do so.

Q. Didn't he ask you about it? A. He must have asked me.

Q. Did he ask you did you have a gun? A. In the confession?

Q. Yes. A. The first confession he asked me did I have a gun?

Q. Yes. Did he ask you this question: "Did you have a gun?" Answer: "I did not." Did he ask you that question and did you make that answer? A. I made that answer.

Q. Did you make the answer that you didn't have a gun because you were in terrible fear? A. All the answers down there I made with his instructions.

Q. Did Mr. Ryan instruct you to say you didn't have a gun? A. Yes.

1421 Q. I want to call your attention to an answer, part of an answer at the beginning of page five on Exhibit 25, part of that answer that we read together before with the unusual language in it: "We came down there and he said go on and I had the thing with me and that was the first time I said it didn't look right." Did Ryan tell you to cross that out? A. He did. He was supposed to give me a break. I mean he tried to get me to say the thing on someone else. That is why on the first confession he was letting me say I didn't have the gun. When you came in, after your conversation with him, you showed him how important the second confession would be and that is when I was made to make the second

1422 confession and you know that as well as I know that.

Q. Well, did Mr. Ryan tell you in the first instance you had the thing on you? A. Everything I said there Mr. Ryan instructed me to say. I told you that a thousand times.

Q. I will ask you a few more. A. I will answer you too, sir, to the best of my knowledge.

Q. Mr. Ryan told you to say: "We came down there and he said go on and I had the thing on me"? A. Right.

Q. That thing was the gun, wasn't it? A. I don't know what he means by the thing.

Q. What did you mean by it? A. The thing?

Q. Yes. A. The thing can be a lots of things.

Q. What did you think it meant? A. I didn't have no thought about it. I was instructed to do that.

Q. So that under Mr. Ryan's supervision you had written into a confession the fact that you had the thing on you? A. Yes.

1424

Q. And Mr. Ryan told you to take it out of the confession, is that right? A. Take what out?

Q. To cross it out? A. Yes.

Q. You had the statement that you had the thing on you? A. Yes.

Q. Isn't it a fact that Mr. Ryan allowed you to correct your statement freely and that you realized what you had in there yourself in the midst of that long answer and that you did cross it out, isn't that the truth? A. After Mr. Ryan instructed me to cross it out.

Mr. Foley: At the top of page six on People's Exhibit 25.

Mr. Wilkinson: We don't have those, sir. 1425

Mr. Foley: That is the best I can do for you.

Mr. Fleischman: What was that remark, Mr. Foley?

Mr. Foley: I say that is the best I can do for you is to indicate where I am reading and the exhibit number.

The Court: If you wish, you can look over Mr. Foley's shoulder at the question.

Q. Were you asked: "You were supposed to say what?" This is at the time you were going into the store. Question: "You were supposed to say what?" and did you make this answer: "We were supposed to go back there in the store and they were to throw up their hands and he told me that was the old man working in the store, a son and a father, and that is who I thought it was all the time and then after that we were going to take him in the back and tie him up and get a cab and go home." Do you remember making that answer? A. I do.

1427 Q. Did Mr. Ryan dictate that to you? A. He did.

Q. This was a statement taken on February 7th? A. He did.

Q. Mr. Ryan, as you have heard from the complainant, Mr. Shaw, Mr. Shaw had visited our office many times; you heard him state that? A. Mr. Shaw?

Q. Yes. A. Repeat it, sir.

Q. He had been in our office many times, looking at suspects and so on and you heard the testimony that Shaw's wife owns the place? A. Oh, yes, I heard that.

Q. Shaw works in it? A. Yes.

1428 Q. But Mr. Ryan told you almost two months after this crime occurred that an old man, a son and a father ran that place, is that right? A. He asked me, he told me that is what I thought. He give me the break and say that is what I thought.

Q. That was going to be a break for you? A. Way before I put on anything he asked me, he said, well, he told me: "Come on clean. You

can't burn for it, nothing like that. You really didn't know it was a detective. All you figured out an old man working there, a father and son's store, Ray's liquor store, and that is how that got in that confession, sir. I have never seen that store or anything about that store until I seen the pictures.

Q. But Mr. Ryan never told you to cross anything out in that answer, did he? A. If I crossed anything out, Mr. Ryan instructed me to.

Q. Did Mr. Ryan ask you to cross anything out? A. He did.

Q. What was it? A. I don't remember. 1430

Q. Well, maybe you can find it. A. I don't see any crossing out.

Q. What did he tell you to cross out? A. If I crossed out anything like I told you.

Q. Not if.

Mr. Wilkinson: I object to that. That is an answer. He asked him "what did he tell you to cross out?"

The Court: Are you pressing the question?

Q. You said a moment ago that Mr. Ryan instructed you to cross something out of that answer, didn't he? A. All the instructions, I crossed 1431 out what he told me, sir.

Q. I didn't ask you that. You stated a moment ago that Mr. Ryan had asked you to cross something out of that answer, didn't you? Didn't you state that? A. Yes, I stated.

Q. What did he ask you to cross out? A. I told you I didn't know.

Q. But you did cross out everything that he asked you to cross out, didn't you? A. I did.

Q. You had to, didn't you? A. Of course.

Q. You were in fear? A. That's right.

Q. Did Mr. Ryan ask you where Burke came from that night? A. He did.

Q. What did you say? A. I told him I didn't know because I wasn't up there.

Q. And then what did he tell you to say for the record? A. I have heard that on the stand. You know I know that.

Q. Well, tell me. A. He was supposed to be behind the crates, the whiskey crates.

Q. When were you supposed to see him? A. When what?

1433

Q. Did Mr. Ryan tell you when you were first supposed to see him? A. Yes.

Q. When were you first supposed to see Burke coming out? A. After I walked in the candy store, I mean the liquor store.

Q. And did Mr. Ryan tell you up to that time whether you had a gun or not? A. Had he told me? A. I don't follow you.

Q. Had he told you whether you were to have a gun or not in this story? A. That is when he was telling me he was going to let me put the weight on the other fellow and all that. Is that the first confession, sir?

Q. Yes, that is. A. 25?

1434 Q. Yes. Now, this confession was all taken by the Stenographer before any part of it was brought back upstairs to be read, wasn't it? A. I beg your pardon?

Q. The Stenographer finished taking your statement and left the room, didn't he? A. After he completed the first statement?

Q. Yes. A. He did.

Q. And then the statement kept coming up a couple of pages at a time? A. Yes, that is true.

Q. But all of the first statement was taken before you marked anything on any part of the first statement, wasn't it? The Stenographer had completed his notes and left the room before any of the confession came up, came upstairs? A. I don't follow you, sir.

Q. Well, I will be glad— A. That is the same question you asked me. You ask me so many questions over and over again.

Q. Just take your time. This is a new one. A. I will. 1436

Q. When the Stenographer finished his notes he left the room? A. Correct.

Q. And your first confession was complete before any of the sheets came upstairs to be marked, isn't that so? A. It was supposed to have been complete.

Q. Pardon me? A. It was supposed to have been complete, yes, and it came up two or three sheets at a time.

Q. But the Stenographer had all of the confession in his notes before any of the typewritten stuff came upstairs?

Mr. Wilkinson: That is objected to what the Stenographer had in his notes and what he sent upstairs and what came up. The witness is not in a position to know any of those things. 1437

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

A. Yes.

Q. When did Mr. Ryan decide to give you a break by letting you put the gun out of your confession, while you were making the answers? A. While I was making the answers?

Q. Or while you were making the corrections? A. That was understood before.

Q. Before you made the answers?—A. Yes.

Q. You were not to have the gun? A. Yes. He was supposed to give me that break. That was supposed to have been a break for me.

Q. But didn't you put into this confession after that understanding was arrived at, on page
1439 five: "We came down there and he said go on and I had the thing on me," so that after you were granted that right that you wouldn't have the gun,— A. Yes, after the agreement.

Q. —yet you put in there that you had the thing on you, is that correct? A. I was instructed to say whatever I said there.

Q. Mr. Ryan after agreeing that you wouldn't have the gun, had you state in the confession that you did have it? A. Yes. He could have slipped as well as I could have slipped.

Q. Sir? A. He probably slipped up there.

Q. Mr. Ryan slipped up? A. He probably did, if that is a slip there.

Q. After there was a discussion about Burke,
1440 were you asked this question: "What happened as he came from behind the cartons?" and did you make the answer: "He came out shooting. There was lots of shooting"; did you make that answer? A. I did.

Q. Did Mr. Ryan tell you to? A. He did.

Q. By that time were some pages now, part of the statement that you had the thing on you at that time, were you supposed to have the gun

in this stick-up or not? A. Would you mind repeating, sir?

Q. No. By the time you got down to this part where Ryan is questioning you about Burke coming out shooting, were you supposed, did you have an understanding with Mr. Ryan at that time that you had the gun in the stick-up or that somebody else had it? A. In the first confession the other fellow is supposed to have the gun.

Q. And did you put into the confession "when we got down there I had the thing on me"? A. I put that down, yes, sir. I said that, sir.

Q. Mr. Ryan told you to put that in? A. He did.

Q. Mr. Ryan told you to take it out? A. He did. 1442

Q. Adolph Clark was there that day, wasn't he, the day you were brought to the D. A.'s office; Adolph Clark was there that day? A. He was as I walked in.

Q. How long do you know him? A. How long I know him?

Q. Yes. A. Do you mean the first time I seen him, sir?

Q. Yes. A. Or the first time I knew him personally?

Q. The first time you knew him. A. The first time I seen him in forty-three. The first time I seen him personally was in forty-six. I am sure of that, around February or March. 1443

Q. In forty-six? A. It was.

Q. From that time on have you been pretty good friends? A. We have.

Q. Did you ever have any difficulty with him? A. Oh, a number of times.

Q. Bad friends? A. No; nothing serious, not too serious. He drinks a lot and I didn't drink. We had lots of misunderstandings.

Q. As a matter of fact, you were sober on the night of December 13th, weren't you? A. I don't drink.

Q. Did Mr. Ryan ask you about a conversation that you had with Adolph when you got downtown after the stick-up? A. Yes, he asked me.

Q. And did he tell you what to say? A. Adolph told him what to say.

Q. Did Adolph tell you? A. Adolph tell Mr. Ryan and Mr. Ryan told me.

Q. And Mr. Ryan told you? A. Yes.

Q. Did you meet Adolph on the night of the 13th? A. Of course.

1445 Q. What was the conversation? A. What was the conversation?

Q. At what time? Let's fix the time first. A. It must have been around nine, nine thirty, ten o'clock.

Q. Where did you meet him? A. At my home.

Q. What was the conversation? A. The conversation was how I got hurt.

Q. How did you tell him? A. I told him I was downtown 103rd Street, 102nd Street, around in there and I had a fight in a crap game and I got stabbed in the arm.

Q. How many times? A. Once.

Q. Once? A. Yes.

1446 Q. Did you tell Adolph that you were glad he didn't go up to The Bronx, that the 13th was an unlucky day? A. You asked me did I tell Adolph that or did I put that there?

Q. No; did you tell that to Adolph when he came to your home? A. That I am glad he didn't go up to The Bronx?

Q. Yes. A. No, I didn't tell Adolph that.

Q. Well, after you showed him your stab wound, did you send him around to Joe Brown's to get any medicine? A. No, I didn't send him.

Q. Any money? A. No.

Q. Did you give him your camel's hair coat to get rid of? A. No.

Q. Where is it? A. I got a camel's hair coat upstairs, sir.

Q. Have you got your gray suit coat? A. No, sir.

Q. Where is it? A. Adolph got rid of it.

Q. Was that the one that had the stab through it? A. Yes, sir.

1448

Q. Did he burn it? A. He said he did.

Q. Just as he said here, is that what he told you? A. Yes. That is what he told me, he burned it.

Q. Did he tell you that he went with Dupree to burn it? A. If I am not mistaken, I think he told me he went with Brown.

Q. With Brown? A. Yes.

Q. And did Brown bring you a coat? A. No.

Q. Did Banks bring you a coat? A. Did Banks bring me a coat?

Q. Yes. A. No.

Q. Did you hear the testimony he gave on the stand? A. Yes, I heard that.

Q. That you wanted a coat to go out in? A. I 1449
heard him say that.

Q. That was a lie? A. It was.

Q. And what you say about it now is the truth? A. Yes, sir.

Q. And all that you are saying here, all of your answers are truthful? A. It is, sir.

Q. Did you tell Mr. Ryan that when you got downtown on the night of the 13th you sent a

fellow to get Adolph down in the hole? A. Adolph told him that and then Mr. Ryan asked me.

Q. What did you say? A. I told him I seen the fellow around nine or ten o'clock when I came up from downtown. I came up from downtown in a cab and I stopped there and that is why I seen Lee and I told Lee to go get Adolph. I asked him had he seen Adolph. He told me no, he hadn't seen him. He had seen him a couple of hours or a few minutes before that or something. I don't know what he said, that evening or something. He said if he see him he will send him up.

1451 Q. Did Mr. Ryan ask you about that man: "What is his last name?" Answer: "I really don't know. I asked him will he tell my friend, Adolph Clark, to come to the house at once. I didn't return home. I was hurt. If he didn't know, it was not to my knowledge. I went home and washed my arm." Did you make that answer? A. I did.

Q. Did Mr. Ryan tell you to make it? A. He did.

Q. Well, now, as a matter of fact, you did send somebody to get Clark, didn't you? A. Yes, that is true and he also told me to make it.

Q. And you also told him to tell Clark— A. Yes.

Q. —that you had been hurt? A. That's right.

1452 Q. And to come to your home. A. That's right. I told him to come up there. I didn't tell him I had been hurt.

Q. No; I beg your pardon; you didn't. You had been hurt? A. No, I didn't tell Lee that.

Q. No, but you had been hurt? A. I am telling you the truth. I didn't tell Lee that. That was my instructions.

Q. Mr. Ryan instructed you to say that you told Lee you were hurt? A. Yes.

Q. But you didn't tell him? A. I don't think I did, sir.

Q. You did send him that message though? A. I told him if he see Adolph, yes. I didn't send him. I asked him if he seen him.

Q. Was Adolph rooming with you at that time? He wasn't, was he? A. No.

Q. But you did room together before, didn't you? A. No. Since.

Q. Since? A. Yes, sir. That's right. When his arm was broken I let him stay in the home I had on St. Nicholas Avenue. I had a kitchenette. I let him stay because his arm was broken and 1454
he couldn't get around much.

Q. Adolph's arm was broken? A. That is when I was working out in Jersey City.

Q. Did you tell Clark on the night when he came to your house that you thought the bullet was still in your arm and you got a razor and picked up your coat and the bullet fell out of the coat; did you tell that to Adolph? A. No.

Q. Did you tell it to Mr. Ryan? A. No, I didn't tell it to Mr. Ryan.

Q. Mr. Ryan told that to you? A. After Adolph told him that.

Q. Well, do you know how Mr. Ryan found it out? A. I could imagine.

Q. How? A. I have a scar on my arm right 1455
below that. He told me—do you want me to show it?

Q. No, you don't need to. A. Because it don't look like a bullet hole, is that why you don't want to see it now?

Q. Are you examining me? A. No. I asked you do you want me to show it?

Q. I said no, not yet. A. It is a scar right below the stab wound and Adolph told him that I had cut the bullet out there and Mr. Ryan had said that looks like a scar where I had cut and cut a bullet out of there, because if a bullet was in there and I didn't go to a hospital, if that is to be seen, I am the one supposed to have the cut on my arm and I have it in my prison record that a scar has been on my arm when I got locked up in 1941. That was for my automobile accident. Just a little scar. That is what it is there, but Adolph didn't know that and Mr. Ryan didn't know that.

1457 Q. "I thought the bullet was in my arm and I got a razor. I picked up my coat and the bullet fell out of my coat." Mr. Ryan told you to say that? A. Yes.

Q. Do you know how Mr. Ryan knew the bullet fell out of your coat?

The Court: Just yes or no.

Mr. Wilkinson: I object to that as an improper question.

The Court: Overruled.

Mr. Wilkinson: Calling for a conclusion.

The Court: I am asking him whether he knows, yes or no.

1458 Mr. Wilkinson: I respectfully except to the Court's ruling.

Q. Do you know where Mr. Ryan got such an idea? A. Yes, I know where he got the idea, of course.

Q. Adolph? A. Correct, it must have been.

Q. Did you tell that to Adolph in your room? A. No, sir.

Q. Did you ever tell it to him at any time? A. No, sir.

Q. But you think Adolph made that up and told it to Mr. Ryan? A. Yes, sir.

Q. Mr. Ryan knew it wasn't so, didn't he? A. I don't know what Mr. Ryan knew or not.

Q. Mr. Ryan knew you weren't in this stick-up, didn't he? A. To me I think he knowed that I wasn't, yes.

Q. That's right, and he knew you didn't kill Detective Burke, didn't he? A. I don't see how he possibly can think it.

Q. And he knew you weren't there when Burke 1460
was shooting, didn't he? A. Don't ask me to read Mr. Ryan's mind, because I am no mind reader, sir.

Q. Well, Mr. Ryan— A. You ask me the impossible.

Q. Mr. Ryan dictated all your answers, didn't he? A. He did. Whatever he believed about it I don't know, because lots of it did point directly to me. I understood that two or three days later and that is why I didn't get angry about burning up my coat. That was his words, him and Brown's words, because it looks too funny that I went down, I am supposed to go downtown; I give him the gun up here. Then the next day I am wounded and the detective killed. He was showing me 1461
where people put two and two together.

Q. How long do you know Banks? A. How long I know Banks?

Q. Yes. A. I would say I know Banks for five or six months.

Q. Is this the gun that you had on December 13th, People's Exhibit 12? A. That looks like the gun, sir.

Q. It was a forty-five? A. Yes, sir.

Q. The one you got from Banks, wasn't that? A. Yes, sir.

Q. That wasn't the first time you had it from Banks, was it? A. No, sir.

Q. Did you ever use it in a stick-up before? A. No, sir.

Q. Did you ever bring it back to Banks, covered with blood? A. Yes, sir.

Q. Wasn't that blood gotten on it in another stick-up? A. It was told to me to say it was, yes, sir. Adolph told me it was.

Q. Didn't you tell Banks that you had used it
1463 in a stick-up? A. I did not.

Q. Didn't you promise to clean it for him? A. I don't know anything about it. That is the biggest lie he ever told in his life. I don't know anything about cleaning a gun, taking a gun apart.

Q. What did he lend it to you for on those previous occasions, to use in a stick-up? A. He lent me that gun, Adolph asked me to go get the gun. At one time Joe had a gun. I got that gun. I went to Brooklyn with that gun in my pocket. It was a little—I don't know—a little, funny looking gun, no trigger guard, a very cute little gun. So Adolph told me, if he had that gun how he can make lots of money, and so then one day he asked me about the gun. I have seen Mack carrying a
1464 gun around like he is a cowboy or something, being in a bar with a gun sticking down here. He was a fellow brags a lot. So I told him would he lend me the gun some time. He told me yes. So I told Adolph. So Adolph went downtown and he told me he cased a job, see, and he told me him and I could go down, do this and that. I told him I wasn't going down in no stick-up. I can make money without a stick-up. I don't want my face seen nowhere in no stick-up.

Q. You borrowed this gun for Adolph to do a stick-up? A. I did. That is what he told me, to tell Banks he will get some money and I will be responsible for the gun, because Banks also knew Adolph, but he figure he will be so young and a wow, something like that.

Q. He figured you were more reliable? A. Adolph give me fifteen, he give me $10. to give Banks and I give the gun and the $10. to Banks.

Q. But you never borrowed it to commit a stick-up yourself? A. No.

Q. You wouldn't go out on a stick-up, would you? A. Not in my life, never. 1466

Q. You say Adolph told you he cased a job downtown? A. That is what he told me.

Q. Did he bring the gun back from the job all covered with blood? A. He did.

Q. You weren't there? A. No, sir. That man, I imagine, is still down there. You can see if I was there or not, if he recognize me. I don't believe he would tell a lie. I don't believe everybody in the world would tell a lie like lots of people I know. He was an ex-police chief, you know. Adolph told you that answer often.

The Court: Wait till you are asked questions, will you?

The Witness: Yes, sir. 1467

The Court: You are admonished by the Court not to discuss the case. Form no opinion until the matter is submitted to you. We will take a recess a few minutes earlier for lunch today. Will you wait for the attendants, please?

(The Jury retires from the courtroom.)

The Court: Two fifteen. Remanded.

(After Luncheon Recess.)

George C. Moore resumes the stand and further testifies on cross-examination as follows:

By Mr. Foley.

Mr. Foley: I am now referring to People's Exhibit 25, what has been characterized as the first statement taken from this defendant Moore.

Q. Moore, were you asked this question by Mr.
1469 Ryan on the night of February 7th: "Q. What did you do then?" and did you answer: "A. We walked over the hill until we had gotten where the whiskey store was, and we was supposed to walk around the block, and I seen the liquor store." A. Yes, sir.

Q. And you made that answer at Mr. Ryan's suggestion? A. Not all them answers I made at his suggestion.

Q. I would like you to pick out for me the part of this answer that you didn't make at Mr. Ryan's suggestion. If you didn't make it at Mr. Ryan's suggestion, was it your own statement? Pick out the part of this answer, please, that was
1470 your own statement. A. Yes, sir.

Q. "A. We walked over the hill till we had gotten where the whiskey store was, and we was supposed to walk around the block and I seen the liquor store." A. He told me about the hill. He asked me did I walk down the hill.

Q. What part of it is your own statement? A. About I seen the liquor store.

Q. Did you see the liquor store? A. No, sir.

Q. But you put that in there yourself, is that correct? A. Yes, sir.

Q. And that is something that was not told to you by Mr. Ryan? A. No, sir.

Q. You added that? A. I didn't add that, sir. I was doing a general conversation. I didn't know what I was supposed to say, if I were supposed to be the one who did it. That was understood between myself and the counsel, sir.

Q. You said it, although you were not told to by Mr. Ryan, is that correct? A. I wouldn't say directly he told me; no.

Q. Now, were you asked the next question: "Q. 1472
Are you familiar with the Bronx?" and did you answer: "A. I think not." A. Correct.

Q. Did Mr. Ryan tell you to change it to, "I no not"? A. Yes, sir.

Q. So that the question and answer read, after you corrected it, "Are you familiar with the Bronx?" I no not." Did Mr. Ryan tell you to put it that way? A. Yes, sir. I didn't cross out anything voluntarily, sir.

Q. Did he tell you to spell know in I know not, "no"? A. I know not?

Q. Yes. A. I know better than that myself, sir; it is "know."

Q. Did he tell you to put "no" there? A. He said what to put there, and I put that there. 1473

Q. Did he tell you how to spell it? A. I wouldn't say he did, sir.

Q. Well, is the spelling your own idea? A. I wouldn't say that, sir.

Q. You wrote it, didn't you? A. I written it.

The Court: Whose idea was it?

The Witness. He told me what to say, and that's what I put down.

Q. Well, Ryan told you to change that answer, "I know not?" A. I know not?

Q. "Are you familiar with the Bronx?" "I no not." A. Yes, sir.

Q. Do you remember being asked this question by Mr. Ryan and did you make this answer:

"Q. Did any bullet hit you? A. One hit me in the left forearm."

A. I made that, sir.

Q. At Mr. Ryan's suggestion? A. He told me that the early part of the evening, sir.

Q. Were you then asked this question and did you make this answer:

1475 "Q. What happened when the bullet hit you? A. It paralyzed my arm. It twisted up. I thought I was hit closer to the heart, because my left side was practically paralyzed."

Did you make that answer? A. He told me it paralyzed me, and he asked me who did it, and that was before the confession, sir.

Q. Did you make that answer? A. I did.

Q. At Mr. Ryan's dictation? A. Correct.

Q. And was it as I have read it: "What happened when the bullet hit you?" "It paralyzed my arm. It twisted up. I thought I was hit closer to the heart, because my left side was practically paralyzed." Did Ryan tell you that? A.

1476 He did.

Q. Did he say he thought you had been hit closer to the heart? A. He told me that evening that he thought I was. He asked me did I think that I was shot more seriously than I was shot. I told him I wasn't, so he told me I was; "stop lying."

Q. And that's Mr. Ryan's answer? A. That was his idea for me to say that.

Q. And you put it into these words? A. Yes, sir.

Q. Did Mr. Ryan ask you this question and did you make this answer:

"Q. Then after the shooting did you see this man who had come from behind the partition fall down? A. No, I really didn't; that's the truth; I didn't see him fall."

Were you asked that question and did you make that answer? A. I did.

Q. Was that Mr. Ryan's dictation to you? A. Part of it and part of it wasn't.

Q. What part of that answer was yours? A. 1478
I told him I didn't see the man fall down.

Q. The answer is—I will read it again to you—"A. No, I really didn't; that's the truth; I didn't see him fall." Was any part of that answer dictated by Mr. Ryan? A. Part of it.

Q. Which part? A. Did I see the man fall down? When I came out of the counsel room—

The Court: Just a moment. Answer the question.

Q. The question is: "Q. Then after the shooting, did you see this man who had come from behind the partition fall down? The answer is: "A. No, I really didn't; that's the truth; I didn't 1479
see him fall. What part of that answer was dictated by Mr. Ryan? A. I wouldn't know; I don't recall.

Q. Were you asked the question: "Q. You ran out of the store? A. I walked out of the store. When I got across to the curb I ran." A. I made that statement; yes.

Q. Was that at Mr. Ryan's dictation? A. No.

Q. Is that your own answer? A. Yes.

Q. When you got out of the store you walked across the sidewalk, and when you reached the curb you ran, is that correct? A. That's the lie I told Mr. Ryan; yes.

Q. But it is a lie that you told Mr. Ryan, isn't it? A. That's correct.

Q. It isn't anything that he told you to do, is it? A. No, sir; not that.

Q. That's your own idea? A. It is.

Q. That you didn't run out of the store; you walked out, but when you got across the curb you began to run? A. Yes, sir.

1481

Q. Where did you run when you began to run? A. I told him I run out the store, and he asked me which way did I run. I told him I just run out the store, and then he asked me did you run across a bridge, and all that.

Mr. Foley: I am going to read those questions. Let me interrupt you. I will ask most of them, anyway.

Q. Were you asked the question: "Q. Did the man that was with you run?" and did you make the answer: "A. He ran from the time he heard the shots. He started to run. I ran towards the man, and he was still shooting, and I know because I looked behind me, and I fell on the floor and I got up. The pressure of the bullet didn't knock me down." Were you asked that question? A. I was.

1482

Q. And did you make that answer? A. I did.

Q. And was that dictated by Mr. Ryan? A. It was.

Q. Mr. Ryan told you to say, "The other man, he ran from the time he heard the shots; he

started to run. I ran towards the man, and he was still shooting, and I know because I looked behind me, and I fell on the floor and I got up. The pressure of the bullet didn't knock me down." That's Mr. Ryan's dictation to you, Moore? A. Yes. Mr. Shaw told him that the other fellow was supposed to run behind the counter where he was and hide or something. That's where the running come in.

Q. Were you asked the question: "Q. Now, then, after you left the store where did you go?" And did you answer: "A. Well, you name the avenues?" A. Oh, yes; I told him that.

1484

Q. And then did Mr. Ryan say to you, "I don't know the avenues. Give me, if possible, the direction you ran?" A. I don't remember him telling me that.

Q. And did you make this answer: "A. I'll give you the direction. I ran out of the whiskey store. I turned right to the corner. I run up that corner to a bridge over something. It was a highway or tracks there. I seen some children on the bridge, and I turned right again to a school-yard, and I seen myself walled in, and that is where I lost him. He was walled up there. I didn't know where I was going, and the next thoroughfare I seen I was walking up three-quarters of the way, and I met a colored fellow with a dog." Do you remember that answer? A. I remember that answer perfectly.

1485

Q. Is that the truth? A. It is not.

Q. Was it dictated to you by Mr. Ryan? A. It was.

Q. Did Mr. Ryan then ask you: "Q. Was that up a hill?" and did you answer: "A. Yes, it

was." Do you remember that? A. Yes, I remember.

Q. Did he then ask you: "Q. Can you describe it to me?" and did you say: "A. It was made of bricks." A. I said that in the confession.

Q. Did Mr. Ryan then ask you if the pavement was of brick? "A. If I am not mistaken it was." Did you make that answer? A. I made all of them.

Q. And all of them were dictated to you? A. That particular one was also; yes, sir.

Q. By Mr. Ryan? A. It was.

1487 Q. Then did he ask you this question: "Q. You walked up a hill?" and did you make this answer: "A. Yes, and I met a fellow with a dog, if I am not mistaken, and I asked him the direction of the subway, and he told me the Third Avenue El was directly in front of me, so I walked to the El and turned left to the next street as the El station. I got in the El station and rode up to the next—I wouldn't say it was the next stop. I changed over and came back to 149th Street and Grand Concourse and got the subway. From the subway I got off at 125th Street and walked to Eighth Avenue, and as I was going up 133rd Street and Eighth Avenue by Arthur's Bar and Grill I seen a fellow there
1488 I knew." Did you make that answer? A. I did.

Q. And did Mr. Ryan dictate that answer to you? A. Part of it, sir.

Q. Mr. Ryan dictated part of it? A. He did.

Q. And part of it are your own words? A. Yes.

Q. The part that are your own words, were they the truth or were they a lie? A. Some of them.

Q. Some of it was true? A. None of it was true.

Q. Whatever part was your own idea was a lie? A. It was.

Q. Were you asked what is the name of this fellow you met, and did you answer: "A. His name is Lee." A. Right.

Q. Were you asked the question: "Q. What is his last name?" and did you answer: "A. I really don't know that. I asked him will he tell my friend Adolph Clark to come to the house at once. I then returned home. I was hurt. If he did know it was not to my knowledge. I went home and washed my arm." Did you make that answer? A. I did. 1490

Q. And did Mr. Ryan dictate that? A. I told him it was around nine o'clock I seen Lee that same night.

The Court: No. Answer the question.

Q. Did Mr. Ryan dictate that answer?

The Witness: Yes; indirectly, yes.

Q. Mr. Ryan told you about Lee and about you going to your home and washing your arm? A. Yes.

Q. And you put it in the statement? A. Yes. 1491

Q. Now, were you asked this question and did you make this answer: "Q. Yes; then Adolph came in? A. Adolph came in shortly and he asked what happened." Did you make that answer? A. Yes.

Q. "Q. Did you tell him what happened? A. Yes, I told him what happened, but I didn't tell

him about the killing, because I didn't know it was a killing." Did you make that answer? A. I did.

Q. Was that dictated to you by Mr. Ryan? A. It was.

Q. Were you asked this question: "Q. You didn't know the man that came from behind the partition was killed? A. Not until I saw it in the newspapers?" Did you make that answer? A. I did.

Q. And was that dictated to you by Mr. Ryan? A. It was.

1493 Q. Were you then asked this question: "Q. What did you tell Adolph? A. I told him I was glad he didn't go uptown; so when we got to 135th Street, the subway, I told him I didn't want to come because there were only two girls there." Did you make that answer? A. Yes.

Q. And did Mr. Ryan dictate it to you? A. He did.

Q. You have stated before that you knew Mr. Ryan was getting information from Adolph, didn't you? A. Correct.

Q. Did you hear Adolph testify on the stand here that he only admitted to what he thought we knew? A. He said that.

Q. Were you on that night only admitting piece-
1494 meal what you found out we knew? A. I don't understand you. Would you mind repeating it?

Q. Were you that night only admitting those things which you found out we knew? A. Correct.

Q. You knew that we were talking to Dupree? A. Yes; Mr. Ryan told me he brought him in.

Q. Dupree was down in the Tombs with you, wasn't he? A. Not as I know, sir.

Q. That's where we got him from. A. I didn't see him. I mean I heard that he was.

Q. And we brought him up here. Did you see him in the building? A. I did.

Q. Where was Clark when we got him? A. I don't know where was Clark when you got him. I heard you got him at three o'clock or one o'clock you say that Dupree was up here. That's what he said on the stand.

Q. You knew that we were talking to Dupree? A. Yes.

Q. And to Clark? A. Yes.

Q. And to Louella? A. Yes.

Q. And to Brown? A. Yes.

Q. And all this time you knew Clark had the gun, isn't that right? A. Yes, I knew. I gave it to him.

Q. Who was with him when you gave it to him? A. Myself and Raymond was there.

Q. By Raymond to you mean Haughton? A. Yes; Haughton.

Q. Lester Haughton, the defendant? A. Yes.

Q. And after you gave Clark the gun, did you leave him and Haughton together? A. Haughton and I came back in the pool-room. Adolph also came back in the pool-room. We stayed down there a while, and there was no conversation there at all. I started shooting pool. Adolph went out the door.

Q. Alone? A. Alone as far as I know; yes.

Q. With the gun? A. I had given it to him. I don't know if he left it with someone else.

Q. You didn't have it? A. I didn't have it.

Q. Haughton didn't have it? A. I didn't give it to him.

Q. Did Mr. Ryan tell you when you came up here that he was investigating the Burke murder? A. When I first came up here?

Q. Some time after you arrived? A. Some time after I arrived?

Q. Yes. A. Of course, he did.

Q. Had Mr. Ryan ever met you before that day? A. Not as I know, sir.

Q. When he told you he was investigating the Burke murder he asked you questions about it, didn't he? A. Yes, right from the start he asked me questions.

1499 Q. That was the first he had ever seen of you? A. To my recollection; yes.

Q. Had you ever seen him before? A. No, I had never seen him before.

The Court: Mr. Moore, please keep your voice up.

The Witness: All right, sir.

Q. And you have stated that Mr. Ryan insisted upon your answering questions that would seem to implicate you in the Burke murder, isn't that right? A. Correct.

Q. Did you ever tell him that Clark had the gun that killed Burke? A. I did. He told me
1500 I was a liar.

Q. You told that to Mr. Ryan? A. Yes. I told Mr. Ryan I gave the gun to Clark. He asked me did I see the gun; did I have the gun that evening? I told him yes. I told him exactly the same thing I have been telling you up here.

Q. You told Ryan that Clark had the gun? A. That I gave it to him that evening; yes, sir.

Q. You told him that on February 7th? A. I did.

Q. Isn't it a matter of fact that you have never said that before until you took the stand here today? A. Isn't that what, sir?

Q. That you never said that until you took the stand here today; that you had given the gun to Clark? A. I said that February 7th.

Q. Didn't you tell us on the night of February 7th that on the night of the killing you gave the gun to Haughton? A. I did not.

Q. So Mr. Ryan knew from information you gave him that Clark had the gun the night Burke was killed? A. Before the confession that's what I told him; yes. 1502

Q. That you didn't have it? A. Beg pardon?

Q. And he knew that you didn't have it? A. I told him I didn't have it. I don't know if he knew or not.

Q. Was Clark indicted for the killing of Burke? A. Not as I know, sir.

Q. But you have been, haven't you? A. I have.

Q. Do you remember being asked this question on that same evening: "Q. Did you send Adolph to get bandage?" "A. No." Do you remember that? A. Yes.

Q. Were you then asked this question: "Q. Did he bandage your arm? A. He didn't have nothing to do with it." Do you remember that? A. Yes; I remember it. 1503

Q. Were you then asked this question and did you make this answer: "Q. What did you do with the blood stains on the clothing, on your camel hair coat and your grey suit coat and on your shirt? A. I didn't do nothing." Do you remember that? A. What's that?

Q. The question: "Q. What did you do with the bloodstains on your clothing, on your camel

hair coat and your grey suit and on your shirt? A. I didn't do nothing." Do you remember that question and that answer? A. Yes.

Q. And then the question: "Q. Did you ask Adolph to do away with it? A. No, sir." Do you remember that? A. Yes.

Q. And then the question: "Q. What happened to them? A. I don't see enough use of my holding up for him." Did you make that answer? A. Yes.

Q. Did Ryan tell you to make that answer? A. That particular answer?

1505 Q. Yes. A. I wouldn't say so.

Q. Is it your own idea? A. I wouldn't say it was, sir.

Q. Did you finally come to a point in your examination where you determined to tell about Adolph's part in this thing? A. Was I asked what, sir?

Mr. Foley: Withdrawn.

Q. But you did state to Mr. Ryan, "I don't see enough use of my holding up for him," didn't you? A. Yes, sir.

Q. And that was not at Mr. Ryan's dictation, was it? A. I wouldn't say. He cut me off a

1506 whole lot of times just like you are doing.

The Court: Was that question dictated by Mr. Ryan?

The Witness: I wouldn't say, sir.

The Court: Proceed.

Q. And the next question: "Q. Tell me what you did? A. He went down and got me bandages

and borrowed some money." Do you remember that? A. Yes, I remember.

Q. And the question: "Q. Who got the bandages? A. Adolph Clark." A. Yes.

Q. And all of the first questions and answers that I have read to you at the beginning of this page you denied, didn't you, that Adolph Clark had anything to do with bandages for your arm or the disposition of your clothes? A. Yes.

Q. And after you made the answer, "I don't see enough use of my holding up for him," you then began to tell us what Clark had done towards getting bandages and disposing of your clothes, isn't that so? A. Right.

Q. And were those answers dictated by Mr. Ryan? A. They were.

Q. "Q. Did he come back with bandages? A. He did the best he could. He got some sulfa drugs that he knew about and some band-aids and some peroxide." Did you make that answer? A. Yes.

Q. Did Mr. Ryan dictate it to you? A. Yes, because I didn't know about no sulfa drugs.

Q. "Q. When he came back with the peroxide and the band-aids he applied them to the wound? A. Yes, sir." Did you make that answer? A. Yes.

Q. "Q. What happened with your camel hair coat and your shirt? A. Adolph told me he would get rid of them for me." Did you make that answer? A. Yes.

Q. "Q. Did he take them from your home? A. Yes." Do you remember that? A. Yes.

Q. "Q. Did you ever see them again after that? A. I never saw them again." A. Right.

Q. "Q. What did he say he did with them? A. He said he burned them up, and he told me to stay in the house, and after a couple of days I told him I would have to make my appearance on the street in case the detectives were looking for me. I just pretended I wasn't hurt, and practically everyone that knew me didn't know I was hurt. Lots of people hit me and I winced, and I told them I was stabbed in the arm." Did you make that answer? A. I did.

Q. And did Mr. Ryan dictate that to you? A. No, he didn't.

1511 Q. Is that your own answer? A. It was my own answer.

Q. Was it the truth? A. Part of it.

Q. Was the part about Adolph taking your clothes and burning them the truth? A. Yes, sir.

Q. Was the part about him telling you to stay in the house a few days true? A. It was.

Q. Was the part about you saying you better make your appearance on the street in case the detectives are looking for you the truth? A. It was.

Q. The part about your pretending you weren't hurt and hardly anyone knowing about it, was that the truth? A. It was.

Q. Was the part about people hitting you on
1512 the arm and your wincing the truth? A. It was.

Q. And was the part about your telling them you had been stabbed in the arm the truth? A. It was.

Q. Was the question next asked of you: "Q. Who was it that pinched your arm? A. Some fellows; I wouldn't know definitely any names." Did you make that answer? A. Yes.

Q. Was that dictated to you by Ryan? A. It wasn't.

Q. Was it the truth? A. It was.

Q. Were you then asked this question: "Q. This picture that you wrote on the back, you said that you went into the liquor store on December 13th about 6:15 or 6:30, are you sure of the time? A. I am almost positive." Was that question asked of you? A. It was.

Q. And did you make that answer? A. I did.

Q. Was the next question asked of you? "Q. Could it have been earlier than that? A. Let me see. No, I don't think so." A. Yes. 1514

Q. Were those two last answers dictated to you by Mr. Ryan? A. The question; yes.

Q. The answer? A. Yes.

Q. He dictated the answer? A. Yes.

Q. "Q. Are you sure of the time? A. I am almost positive." That was dictated by Ryan? A. Yes.

Q. And then the question: "Q. Could it have been earlier than that? A. Let me see now; no, I don't think so." That was dictated by Ryan? A. Yes.

Q. This is People's Exhibit 7. At the time when Mr. Ryan showed you that picture——

The Court: Did Mr. Ryan show you that 1515
picture?

The Witness: Yes, he showed it to me.

Mr. Foley: That is not the exhibit concerning which I want to question, your Honor. The entry is made at the end of the last question. People's Exhibit 4.

Q. Did Mr. Ryan show you that picture? A. He did.

Q. Did he ask this question and did you make this answer while you had that picture before you: "Q. Will you look at this picture and tell me what it is? A. Tell the truth I don't remember this picture. The picture I do know is the one his legs stick out." Did you make that answer? A. I did.

Q. And did Mr. Ryan dictate that to you? A. He certainly did.

Q. He didn't tell you to say that you did know what this picture was, did he? A. Beg pardon, sir?

1517 Q. Mr. Ryan didn't tell you to say in your answer that you did know what this picture was, did he? A. I don't follow you, sir.

Q. Mr. Ryan dictated your answer, didn't he? A. He did.

Q. And the answer he dictated was that you didn't know, isn't that right? A. I don't understand you, sir.

Q. Well, you were asked the question: "Q. Will you look at this picture and tell me what it is?" and your answer was: "A. Tell you the truth I don't remember this picture. The picture I do know is the one his legs stick out." Mr. Ryan dictated that answer, didn't he? A. He dictated that answer.

1518 Q. And you gave the answers that he dictated because you were in mortal fear? A. Correct.

Q. He never told you to say that you did know that picture, did he? A. I told him that I didn't know it.

Q. He never told you to say that you did know it, did he? A. I don't know. Does he say that in the confession? Whatever he told me in the

confession was dictated to me. If I told him I didn't remember the picture I was telling him the truth.

Q. Well, Moore, sometimes you told him that you didn't know things or hadn't been places, but he insisted that you say you did know and that you had been places, didn't he? A. Yes.

Q. As far as this picture is concerned, he told you to say you did recognize it, is that right? A. He said I didn't recognize the picture.

Q. The answer you put in here was dictated by Mr. Ryan, wasn't it? A. Yes.

Q. And the answer he dictated was: "A. To 1520
tell the truth I don't remember this picture." That's what he told you to say, isn't it? A. Yes, he dictated it to me.

Q. But Mr. Ryan had you saying earlier in your examination that you had been in this store? A. Yes.

Q. He had you saying that you recognized the view to the rear, didn't he? A. Yes.

Q. But he told you to say you couldn't remember how it looked from the rear looking out, didn't he? A. What?

Q. Let me read the answer that he dictated to you: "A. Tell you the truth I don't remember this picture. The picture I do know is the one his legs stick out." Ryan dictated that answer, 1521
didn't he? A. He did, because he told me I wouldn't remember that picture.

Q. Ryan told you you wouldn't remember that picture? A. That's what he told me; yes, sir.

Q. Did you remember? A. How could I remember the picture?

Q. I want to show you People's Exhibit 3 and ask you have you seen that picture before? A. Yes, I seen this picture.

Q. Did Mr. Ryan show it to you? A. He did.

Q. And did he ask you whether you recognized it? A. Yes.

Q. What was the answer he dictated to you? A. What was the answer he dictated?

Q. Did he dictate an answer in that case? A. Yes.

Q. Well, what was it? A. I don't know, sir. I don't remember. Would you mind reading it off to me, please.

1523 Q. I will read it. Do you remember whether he said you knew that view or you didn't? A. If I knew that view or I didn't? He told me the views I knew and told me the views that I wouldn't know.

Q. You don't know whether that one is one you are supposed to know or not, do you? A. No.

Q. But were you asked this question about it? It was handed to you, and did you then make this statement: "A. I will tell you what I remember about this picture. I don't remember Detective Burke lying there on the floor. I remember the counter, the partion that the boxes made or the

1524 cartons, and the bunch of bottles on the right-hand side where I was standing." Did you make that answer? A. I did.

Q. And is that the picture you were referring to in the last answer that I read you about the other picture: "A. Tell you the truth I don't remember this picture. The picture I do know is the one his legs stick out." Is this the picture you were referring to in that answer? A. I don't know.

Q. Did the legs stick out in that picture? A. Yes, I see them.

Q. And that's the one you were referring to ten questions before? A. I don't know.

Q. Now, after you made that statement you waited for the stenographic minutes or for the typewritten sheets to come up, didn't you? A. Beg pardon?

Q. To Mr. Ryan's room. A. I waited while the fellow was copying them?

Q. Yes. A. Of course, I waited.

Q. Did you talk with various people in the room while you were waiting? A. No, sir.

1526

Q. Did you talk to the complainant, Mr. Shaw? A. Yes, he came over and talked to me.

Q. Did you say to Mr. Shaw, "I knew you the minute I came in, and I turned my hat brim up and opened my eyes wide so you would have trouble recognizing me." Did you? A. No, that's a lie, sir.

Q. Mr. Shaw is a liar? A. You know it, sir.

Q. Did you say to Mr. Shaw, "It's lucky you were so quick that night, because I would have grabbed you and used you as a shield and you probably would have been killed?" A. Definitely, I did not, sir.

Q. That's another lie? A. It is, sir.

1527

Q. Did you and I have a considerable talk between your first statement and your second one? A. I don't know, sir.

Q. Did we talk about religion? A. About religion?

Q. Yes. A. You talked about that; you or Mr. Ryan, I don't know.

Q. About conscience? A. Oh, yes; that's all you talked about the whole evening.

Q. About God? A. Yes.

Q. And did you then make the statement that you wanted to make further changes in your statement? A. I did not, sir.

Mr. Foley: People's Exhibit 26.

Q. Do you remember Ryan, at 11:45 P. M., saying to you: "Q. Now, Moore, before, around a quarter to nine, you made a statement to me that was taken down in stenographic notes by Mr. Salmore, this gentleman here?" Did you answer: "A. Yes," A. Yes.

1529 Q. Mr. Ryan said to you then, "Q. Is that correct?" and you answered: "A. Yes." Do you recall that? A. Yes.

Q. Did he then say to you "That statement was typewritten," and did you answer "Right?" A. Right.

Q. Did he then say, "What did you do with that statement after it was typewritten?" and did you answer "I signed it?" A. Yes.

Q. Did he ask you "Did you read it?" and did you say, "I read it thoroughly?" A. I did.

Q. Did he ask you, "Did you make all the corrections you wanted to make," and did you answer, "Yes?" A. I did.

1530 Q. Did he ask you, "And you signed the bottom of each page," and did you answer, "Yes?" A. I did.

Q. Did he ask you, "That was a voluntary statement made by you," and did you answer, "Every one of them?" A. Yes; I made that statement.

Q. Did he ask you, "And the statement you now make is voluntary," and did you answer, "Strictly?" A. Yes.

Q. And did he ask you, "And neither I nor anybody else has made any promise to you," and did you answer, "No, sir?" A. Yes.

Q. Did he ask you, "You have not been mistreated in any way," and did you answer, "That is correct?" A. Yes.

Q. Did he then ask you, "Since you have signed the statement you told me you want to make some additional changes," and did you say, "Yes?" A. Yes.

Q. And did he ask you, "What do you want to change?" and did you say, "That I am the one; that I had the gun; that no one else but me had a gun, and I did the shooting." A. Yes.

Q. Did he then ask you, "Did you fire the shots that killed Detective Burke?" and did you answer, "I am the one?" A. Yes.

Q. Did he ask you "How many bullets did you fire?" and did you answer, "I fired all the shots in the gun, five or six; I didn't look in the magazine?" A. Yes.

Q. Did he ask you, "Did you have the gun with you when you came from Harlem?" and did you answer, "I did?" A. Yes.

Q. Did he ask you, "You brought the gun with you to the Bronx?" and did you answer, "Yes?" A. Yes.

Q. Did he ask you, "Was that story you told me about seeing some girls true?" and did you answer, "Yes, that was true?" A. Yes.

Q. Did he ask you, "Why did you bring the gun to the Bronx?" and did you answer, "I had the gun in my pocket when I was supposed to do something else. What I don't know. That was the 13th, and I wasn't for it, and he said I am going to the Bronx for a girl, and he told me two girls, and I told him I would go with him.

I had the gun. I wouldn't say I wasn't thinking about the gun, and when we got there he made the suggestion that we stick up Ray's liquor store." Did you make that answer? A. Yes.

Q. Were you asked the question: "Q. Whose gun was it?" and did you answer: "A. That gun didn't belong to me; it belongs to another boy." A. Yes.

Q. Were you asked the question, "What is the name of the boy it belongs to?" and did you say, "Mack?" A. Yes.

Q. Were you asked, "Do you know his full
1535 name?" and did you answer, "No, I don't?" A. Yes.

Q. Were you asked, "Do you know where he lives?" and did you answer, "No, I don't know the number or nothing like that"; and were you then asked the question, "When had you secured the gun from Mack?" and did you answer, "Befor he went to work, at three o'clock?" A. Right.

Q. Were you then asked, "In the afternoon on December 13, 1946?" and did you answer, "Yes?" A. Yes.

Q. Were you then asked, "After you came out of the store you had the gun?" and did you answer, "Correct?" A. Right.

Q. "Q. And did you have the gun as you went
1536 down in the El train and in the subway to Harlem? A. No." Did you make that answer to Mr. Ryan's question? A. Yes.

Q. Did he ask the question, "What happened to it?" and did you make the answer, "I gave it to him on the bridge?" A. Yes.

Q. Did he ask you the question, "Who did you give it to?"

Mr. Fleischman: I object, if your Honor pleases, on the ground that the answer is not binding, the answer of this defendant is not binding on the defendant Lester Haughton.

The Court: I instruct the jury it is not received in evidence as to the defendant Haughton, but I will permit the question and answer.

Mr. Fleischman: Exception.

Q. "Q. What happened to it? A. I gave it to him on the bridge."

"Q. Who did you give it to? A. Ray."

1538

Q. Were you asked the question,—Were you shown a picture at that time? A. I was. I believe I was, sir.

Q. And were you asked by Mr. Ryan to write your name on it? A. I don't know, sir; I believe so.

Mr. Foley: Mr. Ryan shows the witness a picture.

Mr. Fleischman: If your Honor pleases, I move to strike that last remark of Mr. Foley's out.

The Court: Yes; sustained; strike it out. The jury is instructed to disregard it.

1539

Q. Mr. Ryan did show you a picture, didn't he? A. He did; yes.

Q. And did he then say to you, "Would you mark on the back that this is Raymond's picture and put your name on it?

Mr. Fleischman: If your Honor pleases—

The Court: Objection sustained. The jury is instructed to disregard it.

Mr. Fleischman: If your Honor pleases, we went into that yesterday, and at this time I am going to move for a mistrial on the ground that the repeated statements about that picture are prejudicial to the defendant.

The Court: The motion is denied.

Mr. Fleischman: Exception.

Q. Did Mr. Ryan ask, "Would you mark on the back of that picture and put your name on it?" A. Yes.

Q. And did you say to Mr. Ryan, "I would rather not mark it?" A. Yes.

1541 Q. Did he dictate that answer to you?

Mr. Fleischman: If your Honor pleases, I am going to make a blanket objection to any questions as to this picture, on the ground that it is not relevant. There has been no testimony laying any foundation for it, and on the further ground that it is prejudicial to the defendant Lester Haughton, and the picture further, your Honor, is not in evidence.

Mr. Foley: The picture has been marked for identification and it is not in evidence.

The Court: It is not in evidence, never-

1542 theless.

Mr. Foley: No, it is not.

The Court: There will be no more reference to that exhibit. The jury is instructed to disregard it.

Q. "Q. Where was it you said you gave Ray the gun? A. On the bridge."

Mr. Fleischman: If your Honor pleases, I object to any testimony on the part of this defendant or any statements he previously made as to Lester Haughton, on the ground that they are not binding on him.

The Court: I think I have instructed the jury enough on that. This is received only as to the defendant Moore.

Q. Were you asked, "On the bridge over the railroad tracks that you told me about before?" and did you answer, "Correct?" A. Yes.

Q. Were you asked, "What did you say to him when you told him to take the gun?" and did you answer, that he should take the gun. "I had small pockets?" Did you make that answer? A. Yes. 1544

Q. Were you asked the question, "What type of gun was it?" and did you answer, "Army .45?" A. Yes.

Q. "Q. Automatic? A. Yes." A. Yes.

Q. Were you asked this question by Mr. Ryan: "Had you looked in the magazine after you came out of the store and after you gave him the gun," and did you answer, "No, sir?" A. Yes.

Q. "Q. What did you do with the gun after you gave it to Ray? A. I forgot about the gun until I seen Adolph. I didn't tell Adolph to go and get the gun. I told Ray to get rid of the gun, and Adolph got rid of it." Did you make that answer? A. Yes. 1545

Q. And was it dictated to you by Mr. Ryan? A. Practically every question on there was dictated to me.

Q. Did he ask you this question: "How did you know that Adolph got rid of it?" and did you

answer: "I asked him, and he said he gave it back to Mack?" A. Yes, I made it.

Q. Did he then ask you, "When did he tell you that?" and did you answer, "The next day or the day after?" Did you make that answer? A. Yes.

Q. Did he then ask you, "You mean the day after the shooting?" and did you answer, "Yes?" A. Yes.

Q. Did he ask you, "December 14, 1946?" and did you say, "Yes?" A. Yes.

Q. Did he ask you, "Did you ever see Mack after that to see if he secured the gun from
1547 Adolph?" and did you answer, "I seen him a week later?" A. Yes.

Q. And Mr. Ryan dictated that answer? A. Yes.

Q. And did he ask you, "Did you talk to him about the gun?" and did you reply, "I told him it was hot and to get rid of it?" A. Yes.

Q. Were you asked the question, "What did Mack say?" and did you answer, "He said it was a souvenir and he didn't want his wife to find out; he didn't want his wife to find out what I did with it?" A. Yes.

Q. Were you asked, "Did you tell him what you had done with the gun?" and did you answer, "Yes; I told him the gun was hot and a man was
1548 killed with the gun?" Did you make that answer? A. Yes.

Q. Were you asked, "Did you tell what man?" and did you make this answer: "I told him to get rid of the gun as soon as possible because it was hot. I said, 'If you get caught in a fight they would take the gun and the detectives from Ballistics could tell where the detective was killed with it?" Did you make that answer? A. Yes.

Q. "Q. Did he tell you what he did with it? A. He said he was forced to get rid of the gun?" Did you make that answer? A. Yes.

Q. Were you asked the question, "Did you see him later on to find out what he did with the gun?" and did you answer, "He said everything was all right with the gun?" A. Yes.

Q. And were you then asked, "Is there any other notation you want to make?" and did you answer, "No, sir. Everything else is correct, sir?" A. Yes.

Q. Were you in the District Attorney's office when Mr. Ryan was questioning the defendant Haughton? A. I was. 1550

Q. Did you have a conversation with Haughton when you came to the room? A. At one time.

Q. Did you say to Haughton, "They know all about it; you might as well them them; our friends have talked?" A. I did not.

Q. "I have told them all about my part in it?" A. I did not.

Q. Did you tell him that you had been well treated in the District Attorney's office? A. No, sir.

Q. Did you say to Haughton, "I have been well treated by that man," pointing to Ryan, "and that man," myself? A. I would never say that.

Q. "I wouldn't say this unless it was so?" A. 1551
I never said nothing like that.

Q. Were you permitted to sit in there while he was being questioned? A. Yes, the detectives brought me back in there.

Q. You sat beside him? A. They told me to sit down.

Q. You sat beside him while he was questioned? A. Yes, I was told to sit down.

Q. Did you hear Mr. Ryan ask the questions? A. Yes.

Q. Did you hear him make replies? A. Yes.

Q. Did you see the stenographer make a record of it? A. For a while; yes.

Q. Did anybody strike him or kick him in your presence? A. In my presence?

Q. Yes. A. No.

Q. Did he make the answers of his own free will? A. I don't know.

Mr. Fleischman: I object to that, if your Honor pleases.

1553 The Court: He has answered. Overruled.

Q. Did Mr. Ryan make the answers or did Haughton make the answers? A. He asked him and he made the answers to most of them, some of them; I don't know; the same way I did; the same procedure. They went through the same way. He told me to talk to him; tell him what my lawyer told me, and that's what I told, what the lawyer told me, the confession wouldn't mean nothing and so forth. I didn't want to see him get beat, so that's why I told him.

Q. You really made your confession because
1554 the lawyer told you to; the fellow you thought was a lawyer, is that right? A. That's right.

Q. And then you told Haughton that you thought he ought to make a confession, is that right? A. Mr. Ryan told me, he said, "Will you tell Haughton exactly what happened; he thinks he is a wise guy. Do you want to tell him?" That's when I asked him about the attorney, could he tell Haughton. He said no, for me to tell

Haughton; so he took us in another room. That's when I told Haughton.

Q. Did he send you in to act as Haughton's lawyer? A. Act as Haughton's lawyer?

Q. Yes, in place of a lawyer? A. He asked me, "Go in there and see if this is one of the Raymonds I knew." I told him I knew three Raymonds, when he asked about the picture, about this Raymond, I said, "Yes, I know that Raymond.

Q. You did talk with Raymond? A. Yes, I I talked to Raymond.

Q. And you stayed there while he made his confession? A. Part of the time. 1556

Q. While he made his statement? A. Part of the time.

Mr. Foley: Now, if your Honor please, I would like to bring into the court-room the three county detectives who were assigned to bring Moore from the Tombs, so that he may have an opportunity to identify them.

(The three men referred to come into the court-room at this point and stand at the bar.)

Q. Are these three men, Moore, who are standing at the bar the county detectives who brought you to my office from the Tombs? A. Yes.

1557

Mr. Foley: May I have their names on the record, please?

(Whereupon, the three men gave their names and addresses as follows:

Thomas Denning, 784 East 155th Street.

Frank J. McGarry, 262 Alexander Avenue.

James Honohan, 1754 Hobart Avenue.)

Q. Which one of these men struck you? A. This one here at this end (indicating).

Q. Mr. Honohan? A. Yes.

Q. How about Mr. McGarry? A. Well, the gentleman in the middle told him not to hit me. He told him not to bruise me up, or something like that, and he put a handkerchief around his hand and he hit me one time. He knocked me on the chair and brought me back in.

Q. How about Mr. Denning? A. No, he never did.

Q. Neither of the others; just Mr. Honohan?
1559 A. No; not those two. This one told him not to bruise me, this one here (indicating). He said he had to carry me back to the Tombs, if something didn't turn out right, or something of the kind.

Q. When you say carry you back, you mean take you in or out of a place, escort you? A. No; back down to the Tombs.

Q. You don't mean you were carried. When you use the word carry, you mean take you in or out? A. I was in their custody. They couldn't pin nothing on me, and they had to take me back to the Tombs.

Q. They weren't carrying you bodily? A. No, not bodily; no.

1560

Mr. Foley: Counsel and myself are agreed that we would like a short recess, your Honor; five minutes or ten minutes.

The Court: I suppose I can't impose. Gentlemen, set upstairs.

(After Short Recess)

Q. Now, Moore, you saw the three men who were brought here and who identified themselves as employees of my office, Honohan, Denning and McGarry. Were those the three men who brought you up from the Tombs? A. I believe they are, sir.

Q. Which one of them drove the car? A. I think the one who hit me.

Q. Pardon? A. I think the one who hit me drove the car. I am not certain about that.

Q. Do you know what time you left the Tombs? What is your best recollection? A. My best recollection is between four and four-thirty; something like that. 1562

Q. If I say you were checked out at twenty minutes past five, would you say that was wrong? A. No, I wouldn't say that was wrong, because I stayed down there a while downstairs before they arrived.

Q. Do you think that that record is probably correct, that you left there about twenty minutes past five, the time you checked out? A. I am not certain of the exact time.

Q. Is it or would it be about right? A. I wouldn't say, sir.

Q. Pardon? A. I wouldn't say.

Q. You don't know? A. No.

Q. Did you come directly to the Bronx? A. I came directly to the Bronx. 1563

Q. Where did you sit in the car? A. I sat in the back seat.

Q. And how many men were back there with you? A. Let me see, now. I think there was but one back there with me.

Q. And one up front with the driver? A. Yes; I think so.

The Court: Keep your voice up.
The Witness: I think so.

Q. Do you know which one was in the back with you, McGarry or Denning? A. The one who came in and put the cuffs on me, and I asked him did he have to put the cuffs on me. That's the one that was in the middle. I don't know him by name; I can't remember the name.

1565 Mr. Foley: McGarry.

Q. Was he handcuffed to you as you came up? A. Yes, he was.

Q. Did he strike you in the car? A. No, he didn't.

Q. Did any of the others? A. No.

Q. Did they threaten you? A. No.

Q. Did they tell you where you were going? A. They told me where I was going.

Q. Did they tell you what for? A. No, they didn't.

Q. Then they brought you in. Did they take you to the county detectives' room on the sixth floor? A. They took me to a room on the 6-M.

1566 Q. Wasn't it on the sixth floor, the county detectives' room, or a room—? A. I don't know which room it was in. I know it was a room.

Q. Or a room with a great many desks in it, at least a dozen? A. I am not certain.

Q. And from there you went up to Mr. Ryan's room? A. Yes.

Q. Did the same three men have you in charge? A. They carried me up, yes.

Q. To Mr. Ryan? A. Yes.

Q. And they delivered you to Mr. Ryan? They delivered you into Mr. Ryan's room? A. They carried me in Mr. Ryan's room.

Q. And then when you left these same men left with you, is that correct? A. I wouldn't say for left with me. I know lots of times they weren't with me at all times.

Q. Weren't they with you until you went back to the Bronx County Jail the next morning? A. They were up there in the building, sir. I wouldn't say they were in each room I was in, because one particular room I know, when I went back there 1568
and got Haughton, when they let me talk to him, I know there wasn't three in there then. It was a fat detective.

Q. Who was with you in that room? A. I wouldn't know.

Q. Were you alone with Haughton? A. All but a large detective; yes.

Q. Did they bring you to that room where you talked with Haughton, these three men? A. It was right across the hall from Mr. Ryan's room.

Q. Did they bring you there? A. No.

Q. You told Mr. Ryan that you were not in the Bronx on the night of December 13th, isn't that correct? A. Correct.

Q. Did Mr. Ryan ask you where you were? A. 1569
Yes.

Q. What did you tell him? A. I told him that I was downtown.

Q. Where? A. The Honey Drip Bar and Grill.

Q. Where is that? A. That's on Second Avenue between 101st and 102nd.

Q. Did he ask you what time you got there? A. He did.

Q. What did you tell him? A. I told him I got down there around four o'clock; four or five o'clock.

Q. Did he ask you who was with you? A. Yes.

Q. What did you tell him? A. I told him I was alone.

Q. Did he ask you how long you stayed there? A. He did.

Q. How long did you stay there? A. I stayed in that neighborhood till around nine o'clock.

Q. How long did you stay in the bar? A. Oh, I wouldn't know.

1571 Q. Did you meet anybody you knew while you were in there? A. Of course.

Q. Who? A. A number of fellows I know.

Q. I want their names, please. A. I know they by nicknames and like that.

Q. Give me the nicknames? A. Joe.

Q. Do you know him by any other name? A. I do not.

Q. Do you know what he does for a living? A. I do not.

Q. Do you know where he hangs out? A. Yes, I do.

Q. Is he married? A. I don't know that.

Q. Did you ever work with him? A. No.

Q. Do you know where he works? A. No.

1572 Q. Do you know where he lives? A. No.

Q. Do you know anything about him, except his name is Joe? A. That's all.

Q. Who else? A. A boy by the name of Artie.

Q. What is his full name? A. I don't know.

Q. Where does he live? A. He lived down in that neighborhood some place; I am not definitely sure.

Q. Where does he work? A. I don't know that.

Q. Do you know anything about him, except that his name is Artie? A. That's all.

Q. Whom else did you meet? A. A boy by the name of Packard.

Q. Packard? A. Yes.

Q. Is that a nickname? A. Yes; I believe so.

Q. What is his right name? A. I don't know.

Q. Do you know where he lives? A. No.

Q. Do you know where he works? A. No.

Q. Do you know anything about him, except that his name is Packard? A. That's all I know.

Q. Did you talk to Joe? A. Yes.

Q. And Artie? A. Yes; I believe so. 1574

Q. And Packard? A. Yes.

Q. Whom else did you meet at the bar and grill that you know? A. I didn't say I met them right there in the bar and grill. I met them in the neighborhood.

Q. Did you meet Joe in the bar and grill? A. Yes; he was there.

Q. Did you meet Artie in the bar and grill? A. I don't know. I know I seen him that night.

Q. What time? A. Around eight-thirty or nine o'clock, when we had the trouble.

Q. What time did you meet Joe? A. I seen Joe at the time I walked in the bar.

Q. That was about four in the afternoon? A. Yes; four or five. 1575

Q. What time did you meet Packard? A. He was in a crap game there and was after we left the bar.

Q. What time? A. He was there when the fight started.

Q. Around what time? A. Eight or eight-thirty.

Q. You met Joe in the bar and grill around four? A. Yes.

Q. Did you leave the bar and grill with Joe, or did you go out alone? A. No, I didn't leave with Joe.

Q. What time did you leave the bar and grill? A. I don't know. I imagine I stayed in there a half hour.

Q. That would be about four-thirty? A. I don't know the exact time.

Q. About four-thirty. You got there about four, did you say? A. Yes.

1577 Q. And you stayed about a half hour? A. Yes.

Q. That would be about four-thirty, wouldn't it? A. That's right.

Q. Where did you go then? A. I went around 103rd Street.

Q. On the street? A. Beg pardon?

Q. Were you on the street, or did you go in some place? A. I was on 103rd Street or 102nd Street in a school-yard. There's a school-yard where they were shooting crap.

Q. Did you meet anybody there you knew? A. I knew lots of fellows down there by nicknames; that's all.

Q. Did you go into the school? A. No.

Q. In the school-yard? A. Yes.

1578 Q. Where is it, around 103rd and Second Avenue? A. Somewhere in the vicinity; 101st Street.

Q. Did you go straight from the bar and grill to the school-yard? A. I believe so. No, first I went around on First Avenue looking for a fellow I knew.

Q. What's his name? A. Well, his name, they call him Red.

Q. What is his full name? A. I don't know his full name.

Q. Do you know where he lives? A. No.

Q. Do you know anything about him, except his name is Red? A. All I know he was up-state with me.

Q. Where? A. In Comstock. He used to work in the same gang I worked in.

Q. How long? A. About eleven months.

Q. You only know him as Red? A. That's all.

Q. You never heard the guard call him by name or anything like that? A. No.

Q. He was in the same gang with you? A. Yes. 1580

Q. Well, you didn't find Red. What time do you think it was when you got to the school-yard? A. I wouldn't say. After I left out the bar, I stayed in the bar half an hour, then I arrived at the school-yard. It didn't take me long to walk there.

Q. The bar is near the school? A. It is.

Q. And you walked around First Avenue looking for Red. Did you go directly to the school-yard then? A. That's before I went in the school-yard. I think the first place I went, I went down First Avenue looking for Red.

Q. Well, what time do you think it was when you got to the school-yard? A. When I got to the school-yard it was—I don't know. I stayed on First Avenue about fifteen minutes looking in one 1581 bar and restaurant, like that, you know, and walked on back up.

The Court: Keep your voice up.

A. (Continuing) Walked on back up to Second Avenue; was in the school-yard a while, and we left the school-yard and we went around a hallway because it was getting dark.

Q. Who left the school-yard? A. Myself and about fifteen or twenty other fellows that I don't know by name.

Q. You don't know any of them by name? A. No; some of them by nickname.

Q. What time was it when you left the school-yard? A. I don't know. I told you that I don't know.

Q. Did you tell this to Mr. Ryan on the night of February 7th? A. I did.

Q. Where did you go when you left the school-yard? A. I told you I went around to 103rd Street in a hallway.

1583

Q. What address? A. I don't know the number of the house.

Q. Where is it? A. It's between First Avenue and Second Avenue.

Q. What time did you get there? A. I don't know.

Q. How long did you stay there? A. Well, I stayed there till I got hurt.

Q. How long was that? A. I must have been there around two hours, three hours maybe.

Q. What time did you get hurt? A. It must have been till I got uptown between, probably, nine, ten o'clock. I know it didn't take me but a half hour to get uptown. I got a cab and went

1584 all the way up.

Q. And you got uptown around what time? A. Around, between nine and ten, something like that.

Q. You came up by cab? A. I did.

Q. And was it then that you met Lee? A. Yes.

Q. And asked him to go get Clark? A. Yes.

Q. Now, you got hurt? A. Yes.

Q. Who cut you? A. I don't know the fellow; a Spanish fellow.

Q. What is his name? A. I don't know his name.

Q. What is his nickname? A. I don't even know his nickname.

Q. Did you ever report it to the police? A. Of course not.

Q. Did you ever go to a doctor with it? A. No, I never did.

Q. You didn't commit any crime there, did you? A. No. We had a fight. I had taken a knife off him I know.

Q. Did you cut him? A. I think I stabbed him in his shoulder.

Q. Between four o'clock in the afternoon on December 13th up to the time you met Lee, you didn't run into anybody whose name you know? 1586
A. Of course, I ran into lots of people.

Q. That you know by nickname? A. I don't know. I imagine I ran into some that I know personally; I don't know.

Q. Did Mr. Ryan ask you? A. I don't remember all that. I don't remember who I ran into.

Q. Did Mr. Ryan ask you on February 7th, did you run into anybody that you really know? A. He did.

Q. What did you tell him? A. The same thing I told you.

Q. That you can't remember? A. That I can't remember everybody I ran into. 1587

Q. And the only names you could give Mr. Ryan of people that you saw between four in the afternoon and around nine or ten at night are those you have given us here? A. Yes.

Q. While you were in Mr. Ryan's room was Otis Banks brought in? A. While I was in there; yes.

1588 Q. And did you say to Banks, "I have told them all about it; all they want from you is the gun; go down and get it for them?" A. Something like that.

Q. And did he come back later with Askew and the officers and the gun? A. And Adolph; yes.

Q. And Adolph? A. And Adolph.

Q. And the gun? A. Yes; I believe so.

Q. And it is this same gun, People's Exhibit 12? A. It looks to be; yes, sir.

Q. Now, from the time you ended your first statement, did anybody beat you, except Mr. Ryan? A. Beg pardon?

1589 Q. From the time you ended your first statement, did anybody beat you, except Mr. Ryan? A. Before my first statement?

Q. I say, after you finished your first statement, did anybody beat you, besides Mr. Ryan? A. Mr. Ryan didn't beat me.

Q. He kicked you out of the chair? A. He shoved me out of the chair with his foot.

Q. Where did he kick you, in the stomach? A. He had his foot right here, and I fell backwards.

Q. Outside of that, did anybody do anything to you after you finished your first confession? A. Talked to me; threatened.

Q. Did they beat you? A. No.

1590 Q. Did they threaten you? A. They did.

Q. Did they kick you? A. No.

Q. Who threatened you? A. The detectives.

Q. Was that in the presence of Mr. Ryan? A. Not all.

Q. He was there all the time after you signed your first confession, wasn't he? A. After my first confession when you came in?

Q. Yes. A. And you and Mr. Ryan went out at one time and Mr. Ryan came back in there, and he started telling me about the other confession, and you were telling me about the other confession, and I don't know whether Mr. Ryan went out or not. I don't know. I wouldn't say.

Q. Was it done in the presence of Chief O'Connor? A. Who?

Q. Was the threatening done in the presence of Chief O'Connor? A. Chief O'Connor?

Q. Assistant Chief Inspector O'Connor? A. I don't know him by name.

1592

Mr. Foley: May I ask him to stand up, Your Honor? A. Oh, he has gone out. I will go ahead.

Q. But all the beating was over except for that kick by Ryan at 8:42 when you started to make your first statement? A. What beating was over?

Q. You think you got to the District Attorney's office about six o'clock, is that correct? A. I didn't say it. I say I am sure it was before six o'clock.

Q. You were checked out of the Tombs at 5:20? A. Yes.

Q. How long do you think it took to come up by car from the Tombs? A. I have no idea, sir. 1593

Q. You did come up? A. By car.

Q. I know, but by what route? Did you go over to the highway and come up that way, or did you go through the streets? A. We went directly over to the East Side Drive.

Q. And came up that way? A. Yes.

Q. And you came directly to this building? A. Yes; to the D. A.'s office.

Q. And you are of the opinion that you were there before six o'clock? A. Beg pardon?

Q. You are of the opinion that you got here before six o'clock? A. I believe so, sir.

Q. Do you know about how much before? A. No, I don't.

Q. How long did you remain in the county detectives' room, if that's where you went, before you were taken up to Mr. Ryan? A. It must have been another fifteen minutes before I seen Mr. Ryan; a good fifteen minutes.

Q. You were there about fifteen minutes? A. Yes.

1595 Q. Do you think that would put it past six o'clock? A. I am not sure.

Q. Were you taken to Mr. Ryan's room in your opinion about six o'clock some time? A. I am not sure about the time.

Q. How long were you questioned by Mr. Ryan before he sent you from his room for the first time? A. I imagine he questioned me about fifteen minutes. He looked at my arm about fifteen minutes before and then he questioned me. He asked me where was I at and I told him. Then he asked me a question, and I told him I don't recall, and he said, "I will tell you; I will refresh your memory," and so on and so and

1596 so. Then he showed me the photos there and asked me if I remember them. I told him no. He told me I do remember them.

Q. How long do you think all that took? A. I don't know. To me it seemed like eternity; I don't know.

Q. He looked at your arm for about fifteen minutes? A. Yes. I am sure he looked at my arm two or three times.

Q. You think it took about fifteen minutes to examine your arm all told, the several examinations by Mr. Ryan? A. Yes.

Q. Did the conversation he had with you take longer than it took him to look at your arm? A. Of course.

Q. Well, that would be more than fifteen minutes of conversation, wouldn't it? A. Yes.

Q. How much time do you think he used on your first visit to his room between examining your arm and asking you questions? A. I don't know.

Q. Forty-five minutes? A. Would you mind repeating that question? 1598

Q. How long do you think you were in Mr. Ryan's room on your first visit while he examined your arm and asked you questions? A. How long was I in there?

Q. That's right. A. I don't know, sir.

Q. Could it be forty-five minutes? A. I don't know; I wouldn't say.

Q. It was fifteen minutes with your arm and longer than that with questions? A. Yes.

Q. So that it was a half hour or more that you were in there? A. The first time?

Q. Yes. A. I don't know; I wouldn't say.

The Court: What is your best recollection? 1599

The Witness: My best recollection is that he examined my arm——

The Court: I asked you what is your best recollection as to how long you were in that room.

The Witness: It was no more than a half hour; that's approximately.

Q. Then they took you to another room? A. That's right.

Q. The same three men who brought you up from the Tombs? A. No; I told you them men didn't follow me around from room to room. You know it, Mr. Foley.

Mr. Foley: Just a moment: I will ask Your Honor to direct the witness now to answer the question.

Mr. Wilkinson: The question has been answered according to the question.

The Court: The witness has not been answering a lot of questions. Pay attention to the question, now.

1601

The Witness: I am trying to, sir.

Mr. Wilkinson: I take exception to the Court's remark that the witness has not been answering a lot of questions.

The Court: I say that he has not been responding to questions.

Mr. Wilkinson: I take exception to that remark.

The Court: You have it.

The Witness: I will try to.

The Court: Pay attention to the questions. Answer only the question asked of you, and

1602 don't volunteer any statements. Do you understand?

The Witness: All right.

Q. When you left Mr. Ryan's office, after your first visit to him, did these same three men who brought you from the Tombs take you from his room? A. I don't think so.

Q. Were they with you in the room to which you went? A. Maybe one of them or two of them was.

Q. Which one or two? A. Which one or two?

Q. That's right. You say perhaps one or two. Which ones? A. I don't know.

Q. Can you state from your own recollection whether Mr. Honohan was there when you went to that room? A. I don't know Mr. Honohan.

Q. Mr. Honohan was the man who stayed on the right. A. I don't know Mr. Honohan.

Q. It would be on your left. A. Who's Mr. Honohan, one of the detectives there?

Q. The man you said struck you; one of those three men who stood there? A. Yes. What's the question now?

1604

Q. Did he go with you to this other room the first time you left Mr. Ryan's room? A. I don't know if it was the first time or not. I know at one time he did.

Q. Didn't you testify here before that the first time you were taken from Mr. Ryan's room one of the men punched you in the nose and knocked you into a chair? A. I did.

Q. And didn't you testify here that this was the man who had done it? A. Yes.

Q. And now do you say you don't know whether he was there or not? A. I said I don't know if that was the time or not; if all of them put me in the room at the same time. I don't know that.

1605

Q. I asked you about the first time you left Mr. Ryan's room. I am directing your attention to the first time you left Mr. Ryan's room. Do you know which time I am talking about? A. Yes; I know which time you are talking about.

Q. You say you are not sure of the man? A. I can't tell you when so and so and so and so hit me, or something like that. I can't tell you that.

Q. Did you testify here before? A. Yes, I did.

1606 Q. That the men who brought you from the Tombs, one of them punched you in the nose the first time you left Ryan's room? A. One of the rooms? I went in his room first.

Q. Did you testify here before that he punched—

The Court: Just a minute. You have got to pay attention to the question, and answer only the question, please.

The Witness: I understand what he means.

The Court: Do you understand me, that you must answer the question?

1607 The Witness: Yes.

The Court: Proceed.

Q. Did you testify here before that one of the men who brought you from the Tombs punched you in the nose and knocked you into a chair the first time you were taken out of Ryan's room?

Mr. Wilkinson: I respectfully submit that we ought to go back and have it read.

The Court: Is there an objection to the question?

Mr. Wilkinson: I object to the question as already answered.

The Court: Overruled.

1608 Mr. Wilkinson: I take exception to it. I take exception to the Court's ruling.

The Court: Proceed. Repeat the question.

(Pending question read by Court Reporter as follows: "Q. Did you testify here before that one of the men who brought you from the Tombs punched you in the nose and knocked you into a chair the first time you were taken out of Ryan's room?")

Q. Do you wish to correct it now? A. I am not sure, because that was the first time——

Mr. Wilkinson: I object. There has been no inconsistency shown in the testimony of this witness.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. Was your answer I am not sure? Is that the answer?

The Court: Stenographer, repeat it.

(The answer is repeated by Court Reporter as follows: "A. I am not sure, because that was the first time——" 1610

Q. Is that your present recollection? A. Yes.

Q. And that this is the man who did it? A. I know the gentleman who hit me.

The Court: Do you mean by that, Honohan hit you?

The Witness: Yes; he hit me.

Q. Now, were there police officers in that room, detectives? A. I imagine all of them was. I don't know the Assistant D. A.'s, nobody by Mr. Ryan and yourself. Who the other district attorneys are I don't know. 1611

Q. Well, there were other men in there who were not in uniform?

The Court: What room did you go to after you left Mr. Ryan's room?

The Witness: After I left Mr. Ryan's room? A couple of doors down from Mr.

Ryan's office, a couple of rooms down. I passed the room, I remember, because he stopped me and made me look at a bird nest. He told me there's a bird nest up there.

Q. How long did you remain in that room before you were brought back to Mr. Ryan? A. I don't know.

Q. It was quite a while; wasn't it? A. It wasn't too long.

Q. You were punched and kicked and beaten while you were in there? A. I was.

1613 Q. Did they ask you, did you want to go back, or did you tell them you wanted to go back? A. No; I never was asked did I want to go back.

Q. Did you tell them you wanted to? A. No.

Q. Did they ask you, were you going to change your story? A. Yes, they asked me that.

Q. Did you tell them yes? A. No.

Q. But they brought you back anyhow? A. Yes.

Q. How long were you in that room before they took you out again? A. I don't know, sir.

Q. Was it a half hour? A. I don't know.

Q. Was it an hour? A. I don't know.

The Court: What is your best recollec-

1614 tion?

The Witness: It couldn't have been no hour or nothing like that. Ten minutes; fifteen minutes. I don't know.

Q. Did you go back to Mr. Ryan's room then from there? A. Yes.

Q. How long were you in his room that second visit? A. I really don't know.

Q. Well, try and fix it as best you can? A. I can't, because all them times is mesmerized to me. I don't know.

Q. Was it an hour? A. No.

Q. Are you sure of that? A. Yes.

Q. Was it a half hour? A. I don't know.

Q. Could it have been a half hour? A. It could have been. I don't know.

Q. Where were you taken then? A. Where was I taken then?

Q. Back to the same room where you got the first beating? A. I told you before Mr. Foley.

The Court: Answer the question. 1616

The Witness: Yes.

Q. Where were you taken when you left Ryan's room for the second time? A. I don't know if I left out of there or not. You asked me three times. I don't know how many times I entered the room.

Q. How many times were you brought to Mr. Ryan that evening? A. A number of times. Two or three times.

Q. How many times were you brought there before you made your first statement? A. Two or three times.

Q. After your first visit there and before you made the first statement, you were taken out? 1617
A. Yes.

Q. And brought back? A. I think I was taken out of Mr. Ryan's room twice. That's before the first statement; and then Mr. Ryan came in that room.

Mr. Foley: Yes; you have told us that.

The Witness: Yes.

Q. You came back to Mr. Ryan's room for a second visit? A. Yes.

Q. Were you taken out again before the first statement, do you know? A. For the second time?

Q. Yes. A. Yes.

Q. Were you beaten again? A. Yes.

Q. Were you brought back to Mr. Ryan's room? A. Mr. Ryan came in there.

Q. Mr. Ryan came into the room? A. Yes. That was when you came into the room.

Q. Into the room where you were? A. Yes. Then I went back to his room. That was when
1619 Luella Brown was in there.

Q. Is that the third visit to Ryan's room? A. If I'm not mistaken, it was the second. I wouldn't say definitely.

Q. On the second or third visit you stated there until your first statement was taken? A. Yes, sir.

Q. How long were you there the last time you went into Mr. Ryan's room before the statement was taken? A. No more than two or three minutes before I seen the attorney.

Q. When you came into Mr. Ryan's room, how long did you remain there before you told Mr. Ryan to get a stenographer? A. I didn't tell Mr.
1620 Ryan to get a stenographer. Mr. Ryan told somebody else that.

Q. Did you tell Mr. Ryan you wanted to make a statement? A. The second?

Q. Yes. A. After I came out of the room, he asked me if I was ready. I said, "yes."

Q. How long were you there before the stenographer came in to take the statement? A. At that time, I don't know, sir.

Q. Could it have been an hour? A. Oh, no.

Q. Could it have been half an hour? A. You mean after I came to the room the last time?

Q. Let me direct your attention to the time I am talking about. I am talking of the time you came back to the room before the first statement was taken. A. Yes.

Q. How long were you in the room at that time before the stenographer came in and began to take notes? A. May about five or seven or eight minutes, that's all.

Q. The second time you left Ryan's room, did the same three men who took you from the Tombs take you out of Mr. Ryan's room? A. 1622
The same men?

Q. Yes. A. I wouldn't say all three.

Q. Were some of the three there? A. I'm not certain.

Q. They took you to another room? A. Yes.

Q. How long were you in that room? A. I don't know, sir.

Q. Could it have been an hour? A. No, it couldn't have been an hour.

Q. Do you think it could have been half an hour? A. The first time or second?

Q. The second? A. I don't know. I have no idea of the time I was there.

Q. When you went back from the second time, 1623
is that the time the statement was taken? A. After I asked for an attorney.

Q. That was the time the statement was taken? A. After I got took in there?

Q. Yes. A. Yes, after I talked to the attorney, yes.

Q. Then the statement was taken? A. Yes.

Q. Did you talk to the attorney in Mr. Ryan's room? A. No, sir.

Q. Where was that? A. That was the room opposite from it, right across there.

Q. How long were you in there with the attorney? A. No more than five minutes talking to him; 7 minutes; no more than that.

Q. No more than five minutes? A. Then I came back in and talked to Mr. Ryan maybe ten or fifteen minutes.

Q. Then a statement was taken? A. Yes, that was when the stenographer come.

Q. Did you tell Mr. Ryan you had been beaten?
1625 A. Did I tell Mr. Ryan I had been beaten?

Q. That is what I asked; please answer. A. I didn't have to tell him.

Q. Did you tell Mr. Ryan you had been beaten? A. I don't think I did. I didn't have to tell him. He knew.

Q. He asked you, didn't he? A. No, he never asked me that, sir.

Q. That question was not asked of you? A. Was that question asked of me?

Q. Yes. A. Yes, it was asked of me at the conclusion of the statement.

Q. You answered it? A. Yes, I answered it.

Q. You didn't say you were beaten, did you?
1626 A. Not in the statement, no.

Q. Did you suffer any injury? A. Did I suffer any injury?

Q. Yes. A. To my stomach, sir.

Q. Did you have a nose bleed? A. Yes, sir.

Q. Did you see Dr. Hochman there? A. Yes, I saw Dr. Hochman there.

Q. Did you tell him about your injuries? A. No, sir, I didn't. At one time I told him—yes, I told him about part of my spine.

Q. You told that to Hochman? A. Yes.

Q. That night? A. Yes, I remember that.

Q. Did you tell him that was an injury you had just received? A. I don't know if I did or not.

Q. You told him you had something the matter with your back? A. Yes.

Q. Did Dr. Hochman examine your arm? A. Yes.

Q. Did he have great difficulty finding wounds on it? A. He seemed to have.

Q. Did you point them out to him? A. No, sir.

1628

Q. Didn't you point the wounds out to Dr. Hochman? A. No, sir.

Q. Didn't you laugh at the fact the wound was partially concealed by either an old wound or a vaccination mark? A. No, sir.

Q. I want you to tell me, do you know the names of any of the police officers who beat you? A. No. No more than two.

Q. Do you think you may know their names? A. I know them because they took me down—I heard their names.

Q. Would you know their names if I read them off to you, do you think? A. Yes, I saw them in here.

1629

Q. It was not Police Commissioner Wallander, was it? A. No, sir.

Q. It wasn't Assistant Chief Inspector O'Connor, was it? A. Which one is that?

Mr. Foley: Please stand.

(Man stands in body of court room.)

A. No, sir.

Mr. Foley: Do we need an identification on the record?

The Court: Yes.

Mr. Foley: Give me your name.

(Name given as John J. O'Connor, Assistant Chief Inspector, Police Department, City of New York.)

Q. Do you know the name of Deputy Inspector Rice? A. No, sir, I don't know none of their names but detective Foden who was on the stand.

Q. Foden? A. Yes, Walter. I heard the detective called "Walter."

Mr. Foley: If your Honor please, I intend to produce every officer who was assigned here on that evening. I want to get this information as defintiely as I can. I would like to call in now those who are here, so that they do not have to remain here again another day.

Mr. Wilkinson: I certainly object to a parade of police officers at this time. It is highly prejudicial to the interests of the defendant Moore.

The Court: Isn't his contention to the effect that he was beaten by a number of officers?

Mr. Wilkinson: The defendant never contended that Commissioner Wallender beat him.

The Court: I looked at you when I spoke to you. When I speak to you, I expect you to look at me, not at the district attorney. Is it the defendant's contention that he was beaten by a number of police officers?

Mr. Wilkinson: As I recall the defendant's testimony, he was never beaten by Commissioner Wallender, your Honor.

The Court: Are you going to answer me? Never mind. Continue with the examination.

Mr. Wilkinson: I respectfully except.

By the Court.

Q. How many police officers do you say hit you? A. I know two by name.

Q. How many police officers do you say hit you, I asked you; how many officers hit you? A. May I explain it? 1634

Q. No, how many hit you? A. I don't know.

Q. How many men hit you? A. I don't know.

Q. Was it more than one? A. Yes.

Q. Was it more than two? A. Yes, sir.

Q. Was it more than five? A. I don't know that, sir.

The Court: Proceed.

By Mr. Foley.

Q. Did you lose consciousness at any time through the beatings? A. At one time when detective Holt hit me in the temple.

Q. On what trip out of Mr. Ryan's room did that happen? A. I don't know. 1635

Q. Was it the first? A. No, it wasn't the first.

Q. Was it the second? A. I told you I don't know, sir.

Mr. Foley: (To attendant) Get Holt, Green, Foden, Farrell and Dinan.

Mr. Wilkinson: I will object to the exhibition put on by the district attorney calling a number of police officers in the presence of the jury.

The Court: Objetcion overruled.

Mr. Wilkinson: I respectfully except.

Q. Was it any of these officers at the bar that kicked or struck you? A. Yes, sir.

Q. Pick them out, please. A. Detective Foden, detective Holt, and this curly headed fellow there by detective Green.

Q. Do you know Green?

1637

The Court: Wait a minute.

Mr. Wilkinson: I object, he has been asked a question; he should be permitted to answer.

The Court: The witness has been given and will be given every opportunity to answer questions asked of him. I want to know who he is identifying. I don't know. I know two.

Mr. Wilkinson: I respectfully except.

The Court: Point out the man who hit you; which of the five officers here hit you?

The Witness: Detective Walter Foden, detective Holt and the other detective—I don't know his name—on the right.

1638

The Court: On the end? On the left?

The Witness: On the right of detective Green.

The Court: The second man with the green tie, or is it?

The Witness: Yes.

Mr. Foley: You mean this man here? (Indicating.)

The Witness: Yes.

The Court: What is his name?

(Name given as Thomas Farrell, Shield 332, 41st Squad.)

Q. The other men did not strike you? A. At no time.

The Court: That is all; step out. Let me have their names first.

(The following gave their names: Detective Foden, Shield 580, 41st Squad. Detective James Holt, Shield 763, 48 Squad. Detective Green, Shield 1749, Bronx Homicide 1640
Squad. Lieutenant James A. Dinan, 48 Squad.)

The Court: We haven't the other man's name.

Mr. Foley: Yes, we have, your Honor.

The Court: All right.

Q. You have picked out three police officers who have struck you? A. I have.

Q. You also picked out one of my men, Mr. Holoran, that is four? A. Yes.

Q. Mr. Ryan is another, the Chief Assistant? A. Yes, sir.

Q. That is five. Anybody else? A. I wouldn't 1641
know, sir.

The Court: Were you hit by anybody else?

The Witness: I don't know. While on the floor lots of them kicked me. I don't know how many.

Q. When you were on the floor, were they stomping on you, kicking at you? A. Reaching out and kicking me, yes.

Q. Where? A. In my body mostly.

Q. Where? A. In my back, in my stomach, on my shins.

Q. Anybody kick you on the head? A. No. Maybe when I was "out," maybe somebody kicked me in the head; I don't recall.

Q. Where was it that happened, that you were thrown to the floor and kicked? A. That was in the room about two doors down from Assistant
1643 District Attorney Ryan's room.

Q. On the same side of the corridor as Mr. Ryan's room? A. Yes, sir.

Q. You think it is about two doors away? A. Yes. I don't think it is directly next door. I know I passed maybe one or two rooms; I don't know.

Q. What kind of a room was it? A. I can't describe the room there, sir.

Q. You were in it? A. Yes, but I was kept very busy at the time.

Q. They kept you busy as soon as you got in? A. Yes.

Q. They kept you busy until you got out? A. Yes.

1644 Q. Beating you? A. They kept me busy dodging.

Q. That was about half an hour? A. I didn't say that.

Mr. Foley: Your Honor, I have concluded except I do want to bring—I would like to ask one more question, and then I will conclude with the statement of how I think we can make some arrangement with the balance of the witnesses.

Q. The officers that were in there that night did not remain with you all the time, did they? A. How do you mean? I don't follow you.

Q. Some of the officers were not with you all night, were they? A. I don't know.

Q. Did you know that a group of officers came in with Haughton? A. Yes.

Q. Did you know that a group of officers brought up Banks? A. Yes.

Q. That they went down to Harlem with Banks and brought back Askew? A. Yes.

Q. They were in and out on various details all that night, weren't they? A. I wouldn't say 1646
all night. I know lots of them were sitting down when I made my first statement. They were asked to get Haughton and Banks. They asked Adolph—they asked me his name, where he lived. I didn't know where he lived.

Q. They did go out on occasions? A. Yes, you sent some of them out, yes.

Mr. Foley: I would like to state, I do want an opportunity to present every officer who is shown to have been assigned there that night.

The Court: You want an opportunity for further cross-examination?

Mr. Foley: Yes. 1647

The Court: The Court will allow it. Gentlemen of the jury, you are admonished by the court not to discuss the case. Form no opinion until the case is submitted to you by the Court. Monday we can start at half past ten.

Mr. Wilkinson: Through the cooperation of the Court, the defendant had John Staunes

here today, who is at the present time in the Bronx County Jail. He will be a witness for the defendant, Moore. May I respectfully ask the Court to instruct the Police or the Department of Correction to have him in court Monday morning?

The Court: You know that he will be. Gentlemen, you are excused. Defendants remanded.

1649 New York, March 31, 1947.

(Trial Continued.)

Before: Hon. James M. Barrett, County Judge, and a Jury.

Appearances: The same as heretofore noted.

(The Jurors were called individually by name and each answered.)

George Moore, defendant, resuming as a witness in his own behalf, testified as follows:

Cross-examination by Mr. Foley (continued).

1650 Q. Moore, when you were in court on Friday, in response to a question of Counsel, you made an answer; it was about the time you were taken from Mr. Ryan's room to another time. Do you recall that? A. I remember lots of questions.

Q. I haven't given you the question. I meant do you recall being brought from Mr. Ryan's room to another room. A. Yes, sir.

Q. In which you were beaten? A. Yes, sir.

Q. And you stated Mr. Ryan came into that room while you were there? A. Yes, sir.

The Court: Keep your voice up, please.

The Witness: Yes, sir.

Q. Do you remember your Counsel asking you this question——

The Court: Page?

Mr. Foley: Page 493, first question, the record of March 28th.

The Court: Have you got it, Gentlemen? 1652

Mr. Wilkinson: Yes, sir.

The Court: All right, proceed.

Q. Do you remember being asked by your lawyer and making this answer: "Into that room you were in?" Answer: "He came in that room. When he came in that room he had his hands like that." Do you remember that question and answer? A. "He had his hands like that;" I don't recall that, sir.

Q. When Mr. Ryan came in did he make any gesture with his hands; you testified when he came into the room he had his hands like that; do you remember that? A. I don't know what 1653 you mean, sir.

Q. Did Mr. Ryan make any gestures with his hands when he came into that room that you now recall? A. No, sir.

Q. When you came to the District Attorney's office in the evening of February 7th how were you dressed? A. How was I dressed?

Q. Yes. A. The same thing I have on at present.

Q. Did you at that time have on the tan coat to which you referred on Friday? A. No, I didn't.

Q. What kind of a coat did you have on when you came to the District Attorneys' office? A. I had a blue overcoat on, sir, dark blue.

Q. When did you get the tan coat? A. Detective went down to the house and got it.

Q. Did you tell Mr. Ryan when he was questioning you on the night of February 7th that you still had the coat you had on December 13th? A. Yes, sir.

1655 Q. Did he send for it? A. Yes, sir.

Q. And inspect it? A. Yes, sir.

Q. What detective brought it, do you know? A. No, I don't recall.

Q. Where did you get it, in Mr. Ryan's office or in jail? A. In Mr. Ryan's office.

Q. On the same night? A. Yes, sir.

Q. Did he bring up other clothes too? A. He did.

Q. When you left the District Attorney's office were you wearing the same clothes that you wore when you came up? A. Yes, sir.

Q. The same suit? A. Yes, sir.

Q. Is that it? A. Yes, sir.

1656 Q. On your first visit to Mr. Ryan's office you stated he examined your arm? A. Correct.

Q. You took off your jacket or suit coat? A. Of course. He made me strip all the way down.

Q. And did you take your shirt off? A. I did.

Q. What kind of an undershirt did you have on; was it sleeveless? A. Yes, sir.

Q. Did you take the undershirt off or leave it on? A. At one time he made me take that off, sir.

Q. Did you put it back on after he examined you? A. I did.

Q. Did you put your shirt back on? A. I did.

Q. Did you put your jacket back on? A. I did.

Q. Did you put your overcoat on or were you without an overcoat that night? A. At one time I put it back on before I left.

Q. Well, you put it on when you were leaving the building after it was all over? A. Yes, sir.

Q. After Mr. Ryan examined your arm you put back your shirt; did you have a vest? A. No, I didn't.

Q. And your suit coat? A. That's right. 1658

Q. Is that the way you were dressed when you were let out of Mr. Ryan's room the first time? A. Was I dressed like that when I let out of Mr. Ryan's the first time, the first time out or into his room?

Q. You stated you resumed all your clothing except your overcoat, is that right? A. Yes, sir.

Q. Is that the way you were dressed when you left Mr. Ryan's room the first time? A. Not the first time, no, sir.

Q. How were you dressed then? A. I didn't have any coat on.

Q. What did you have on? A. My undershirt.

Q. Just your undershirt? A. Yes, sir.

Q. When did you resume your coat and your shirt? A. After I went, if I am not mistaken, after I went in the room with the attorney and I made up my mind to tell the story, sir. 1659

Q. Up to that time did you have your undershirt on or were you stripped to the waist? A. The one time I had everything on and I asked may I put my coat on when the window was open.

Q. That was when he finished his first examination of your arm, is that right? A. I beg your pardon?

Q. That was when he finished his first examination of your arm? A. I didn't put my coat back on after he finished my first examination, sir.

Q. Did you state here a moment ago that you did, that after Mr. Ryan examined your arm you put back your jacket? A. Not the first examination, sir.

Q. How many times did Mr. Ryan examine your arm while you were in that room the first time? A. The first time?

1661

Q. Yes. A. Well, the first time I went in there he examined my arm for about, I will say, including questions, about fifteen minutes, sir.

Q. And did you put your clothes back on then? A. No, not then, no.

Q. Did he examine you again before you left the room? A. Yes. He came in the other room.

Q. The question I asked you, Moore, is did he examine your arm again before you left the room? A. I don't know, sir. I wouldn't say.

Q. When you left the room and went through the corridor there were a number of people in the corridor, weren't there? A. There was.

Q. How many doors down did you go to another

1662

room? A. Well, I will say no more than like this one door and then into the next room, sir. I am not sure of that.

Q. Did you see a colored porter there some time during the evening? A. A colored porter?

Q. Yes. A. I did.

Q. And did you see the Medical Examiner? A. Dr. Hochman?

Q. Yes. A. I did.

Q. Did you see the complainant, Mr. Shaw? A. I did.

Q. Did you see newspaper reporters? A. At one time I did.

Q. How were you dressed as you went through the corridor from Mr. Ryan's room to another room the first time you came out? A. The first time?

Q. Yes. A. In my undershirt.

Q. You didn't have your shirt on? A. With my coat in my hand.

Q. You had your coat in your hand? A. Yes, putting in on. When I got in there he wouldn't 1664
let me put it on.

Q. Who wouldn't? A. The detective or Mr. Ryan. He looked at my arm again.

Q. Mr. Ryan wasn't in there when you got in the room? A. No, he wasn't.

Q. When Mr. Ryan came in didn't he tell you to take your things off so he could look at your arm again? A. Not when he came in the first time. The first time, sir, I had my coat off.

Q. You did? A. Yes, sir. I was in my undershirt. I remember that good now.

Q. Did you have your shirt with you? A. My shirt with me? A. I don't think so. I am not sure.

Q. When you came back to Mr. Ryan's room 1665
how were you dressed? A. The same as I went in there, sir.

Q. Did you carry your coat back with you? A. I don't even think I had my coat then. I think it was in the first room with my overcoat.

Q. When you got back into Mr. Ryan's room did you put on your coat and your shirt before you left the room again? A. I don't know, sir.

Q. You wouldn't say that you didn't, would you? A. I wouldn't say that I didn't what, sir?

Q. Put the coat on and the shirt. A. I remember after the first time I came out, I came back into Mr. Ryan's room.

Q. The second time you went into— A. I remember this.

Q. Just a moment.

Mr. Foley: Your Honor, I would like the witness to answer now the questions that I ask.

1667 The Court: You are directed to answer the questions——

The Witness: Yes, I know.

The Court: —that are being asked.

The Witness: I know.

The Court: Don't volunteer anything else.

The Witness: Yes.

Q. When you came back to Mr. Ryan's room and entered it for the second time, did you then put on your jacket and your coat? A. I don't think so, sir.

Q. Have you any recollection of when you did put them on? A. Do you want my own opinion, sir?

1668 Q. Yes. A. I will tell you this: I do remember I had on my coat, my shirt anyhow when Dr. Hochman came in there and examined me, because I remember taking my shirt off when Dr. Hochman came in there.

Q. Did Dr. Hochman examine you before you left the room to go to the toilet? A. Before I went to the toilet? He didn't examine me till—after it was all over I went to the toilet too, sir, twice.

Q. I am talking about the first time. A. About the first time?

Q. Yes. A. I am not sure.

Q. After you had come back to Mr. Ryan's room for the second time you asked might you go to the toilet, is that correct? A. Yes, sir.

Q. And you did go? A. Yes, sir, I went.

Q. How were you dressed when you went to the toilet? A. That is the second time?

Q. Let me withdraw that question. Is that the time you saw the colored porter, when you went to the toilet? A. Yes, sir, I saw him then.

Q. How were you dressed at that time? A. If 1670
I am not mistaken, I don't think I had my coat on.

Q. Did you say you don't think you had it on or off? A. I don't think I had it on.

Q. Did you have your shirt on? A. I am not sure of that. Yes, I had my shirt on, I think, yes.

Q. And is that the same shirt that you had on when you went to the Bronx County Jail? A. I had this on all the while.

Q. Is it that one? A. It is this one, yes, sir.

Q. Did you have a tie on that evening?

The Court: Indicating the shirt the defendant is wearing.

1671

Q. Did you wear a tie that evening? A. No, sir.

Q. I want to direct your attention to the first time you were taken from Mr. Ryan's room once more. A. Yes.

Q. As soon as you entered the other room one of the detectives or one of the men punched you in the nose and knocked you into a chair, isn't that true? A. That's right.

Q. And was it a light tap or did he really give it to you? A. He didn't hit me. I won't say he hit me hard. He knocked me down. He knocked me in the chair. I was almost sitting in the chair anyhow.

Q. Did you testify yesterday, specifically on Friday that he punched you in the nose? A. He did punch me in the nose.

Q. It was a good one? A. Of course, it was a good one.

Q. And it made you bleed? A. It did. It made my nose bleed.

1673 Q. An old-fashioned nose bleed or just a couple of drops? A. My nose was bleeding, sir. How much it was bleeding, I won't say, sir, because I put my handkerchief. My handkerchief was all bloody. That is why——

Q. Please just——

Mr. Wilkinson: That is an answer to the question. He asked him how it bled and he is telling him how it bled.

The Court: Repeat the question and answer.

(The Court Reporter reads question and answer as follows: "Q. An old-fashioned nose bleed or just a couple of drops? A. My
1674 nose was bleeding, sir. How much it was bleeding, I won't say, sir, because I put my handkerchief. My handkerchief was all bloody. That is why——")

The Court: That is an answer.

Q. As soon as you get this blow that made your nose bleed, somebody kicked you out of the chair, didn't they? A. Kicked me out of the chair?

Q. Yes. A. They kicked me when I was on the floor, sir.

Q. How did you get out of the chair on to the floor; were you kicked or shoved or what? A. I remember myself on the floor and I remember Mr. Ryan kicked me out of the chair with his foot.

Q. That is the occasion— A. That wasn't then.

Q. That was later?

The Court: Do you understand you are now being asked about the first time you claim you were beaten? Do you understand that? 1676

The Witness: Yes, sir.

The Court: Confine your answer to that question.

The Witness: Yes, sir.

Mr. Wilkinson: I except to the statement and admonition of the Court. The questions are not specific as to time as to when he was kicked out of the chair and the testimony has been and it was confined to the questioning.

The Court: The question asked by Mr. Foley is with respect to the time he left Mr. Ryan's room and the first time in that room.

Mr. Wilkinson: The questions asked of 1677 him are indefinite as to time.

The Court: Make an objection if they are indefinite.

Mr. Wilkinson: I respectfully except.

The Court: Overruled.

Q. The question, Moore, was, as soon as you were knocked into the chair and your nose began

to bleed, were you kicked out of the chair. A. The next time I remember I was on the floor. They were kicking me in the stomach.

Q. Please answer my question.

Mr. Wilkinson: I respectfully object. That is an answer to the question that has been asked of this witness.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. They kicked you while you were on the floor. Let it go. I am sorry.

1679

Mr. Wilkinson: I object to the statement by Counsel and I move to strike it out.

The Court: The Jury is instructed to disregard it.

Q. You were kicked while on the floor? A. A number of times, yes.

Q. That was immediately after you got into the chair, wasn't it?

The Court: Answer the question.

A. After I immediately got knocked into the chair I was kicked on the floor, is that what you

1680 are telling me?

Q. Yes. A. If I was in the chair, how could I be on the floor at the same time?

The Court: How did you get out of the chair?

The Witness: How I got out of the chair?

The Court: Yes.

The Witness: I imagine I was kicked out.

The Court: Proceed.

Q. Had you been in the chair long before you got kicked out, and then you were kicked while you were on the floor, weren't you? A. Yes.

Q. Where were you kicked? A. I was kicked in the stomach. I was kicked in the back and all over.

Q. Did you lose consciousness at that time? A. At that time I did not.

Q. And were you beaten up to the time Mr. Ryan came in that room? A. I was. 1682

Q. And after he left did they resume beating you? A. After I left, after he left, if I am not mistaken, of course, I am in there with him. That is when you came in there, sir.

Q. The beating stopped then? A. When you came in there the first time?

Q. Yes. A. It did, because you started questioning me, sir.

Q. Did you ever see me that night, Moore, until you were in the middle of your first statement with a Stenographer present? A. I am sure I did, sir.

Q. When you left that room where you got the beating, did you go to a bathroom to wash up the 1683
blood or were you taken directly to Mr. Ryan's room? A. I didn't wash up no blood, sir, not then.

Q. And after you talked to Mr. Ryan you were taken out to the bathroom; weren't you? A. No, sir.

Q. Back to another room? A. After I left that room I went to the bathroom. That had to be the second time, sir.

Q. Mr. Ryan's room; it was from Mr. Ryan's— A. I don't know Mr. Ryan's room; it wasn't out of Mr. Ryan's room.

Q. What room did you leave when you first went to the bathroom? A. From the odd room from Mr. Ryan's room right down the corridor.

Q. Was that after you had been brought back a second time and taken out again? A. Yes, sir.

Q. Did you see me in that room? A. At that time? I know you came in there after I was there the second time, sir.

Q. Where did you go from that room? A.
1685 From that room?

Q. Yes, to the bathroom? A. If I am not mistaken, that is the time.

Q. How were you dressed then? A. How was I dressed then the second time?

Q. Yes, the time you went to the bathroom, the first time, how were you dressed? A. I had my shirt on, sir.

Q. And you used the stool while you were in there, didn't you? A. I did.

Q. Were you still bleeding? A. No.

Q. You got a kick in the face in there? A. Yes, I did.

Q. Did the blood spatter all over? A. No, I won't say it splattered all over.

1686 Q. Did your nose bleed again? A. No, it didn't bleed again. It didn't start bleeding again.

Q. The punch in the nose made it bleed, didn't it? A. It did, the right nostril.

Q. Bleeding some time? A. I don't say for some time, sir.

Q. Nor how much? A. Not definitely, no. I don't say how much. All I know my handkerchief was real bloody.

Q. Real bloody? A. And my arm.

Q. And your arm and were you allowed to wash off your arm? A. Not then, sir.

Q. And then you got a kick in the face, is that right? A. I got a kick, sir.

Q. You had a shirt on then? A. Yes.

The Court: Are you referring to the——

Mr. Foley: The time in the bathroom.

The Court: Direct his attention to that.

Q. That didn't make you bleed, did it? A. No, sir, that didn't.

Q. Was there any blood on your shirt? A. I 1688
don't know, sir.

Q. Was there any blood on your suit? A. No, there wasn't no blood on my suit.

Q. Was there any of your trousers? A. No, it wasn't on my trousers.

Q. They haven't been to the cleaner's, have they? A. They haven't.

Q. And that is the same shirt you had on that night? A. That is the same shirt.

Q. Is there any blood on it anywhere? A. No, sir, I don't think.

Q. When you came to Mr. Ryan's office, isn't it a fact that he sent out for food for you and coffee? A. At one time he did.

1689

Q. Wasn't that on the occasion of your first visit to Mr. Ryan's office? A. My first visit?

Q. Yes. A. No, definitely not.

Q. Didn't you have coffee and sandwiches several times that evening? A. After the confession, sir, and during the confession.

Q. And during? A. They brought in during the confession.

Q. And did you order what you wanted? A. No, sir.

Q. You just took what came? A. That's right.

Q. Do you smoke? A. I do.

Q. Cigarettes or cigars? A. I smoke cigarettes, sir.

Q. Were you supplied with cigarettes? A. I was given some cigarettes, yes, sir.

Q. All evening? A. Not all evening. I had cigarettes when I first went in there.

Q. Were you free to smoke at all times from the very beginning? A. No, sir.

Mr. Foley: Now may I have the exhibits, please?

Q. You made a confession on the night of February 7th, in which you admitted that you had killed Detective Burke, didn't you? A. My instructions, I did.

Mr. Foley: I ask your Honor, please, that he answer the question directed to him.

The Court: That is an answer.

Mr. Foley: Very well.

Q. You now say that that confession is not true? A. Absolutely not, sir.

Q. You say you made that confession because you were in fear and because of what some alleged lawyer told you? A. Correct, sir.

Q. You say that whatever you wrote on the back of the exhibits you did at Mr. Ryan's direction? A. Right, sir.

Q. And you say further, that whatever you stated in the confession was dictated to you by Mr. Ryan? A. Yes, sir.

Q. And is it fair to assume that you did at all times do and say as Mr. Ryan directed you to? A. I did, sir, from the beginning of the statement.

Q. From the beginning of the statement? A. From the beginning, I did as I was told.

Mr. Foley: Now, your Honor, in view of the defendant's testimony, I now press the questions which were ruled out by your Honor about another picture in this case, which has been marked as People's Exhibit C, I think, for identification.

The Court: May I see the paper? Come up, Gentlemen. (Messrs. Foley, Fleischman, Wilkinson and McDonough confer with the Court.) 1694

The Court: I understand you press this and the Court will permit you to conduct the examination as indicated.

Mr. Foley: May I have the last question and answer before the colloquy?

The Court: You may. (The Court Reporter reads question and answer as follows: "Q. From the beginning of the statement? A. From the beginning, I did as I was told.")

Q. Do you remember, Moore, during your second statement Mr. Ryan showing you a man's picture? A. I did. 1695

Q. What did he say to you?

Mr. Fleischman: If your Honor pleases,—

The Court: You may show the picture now. I will permit that. Is that the picture he showed you?

The Witness: Yes, sir.

The Court: Is it?

The Witness: Yes, that is the picture.

Mr. Fleischman: If your Honor pleases, I am going to object to any testimony about an alleged picture on the ground that your Honor not only has sustained the objection and the District Attorney persists in this line of examination. He has done it on three different occasions during the trial and I respectfully submit, your Honor, it is prejudicial to this defendant to the extent where I now move for a mistrial.

The Court: Which defendant?

1697 Mr. Fleischman: The defendant Lester Haughton.

The Court: Motion denied.

Mr. Fleischman: Exception.

The Court: In view of the cross-examination this becomes material. Proceed.

By Mr. Foley.

Q. Did Mr. Ryan ever say to you: "Would you mark on the back of this picture and put your name on the back?" and did you answer: "I would rather not mark it"?

Mr. Wilkinson: I will object to the question. The witness is being questioned about
1698 something that is not in evidence and I respectfully submit that the question at this time is irrelevant, incompetent and immaterial.

The Court: Overruled.

Mr. Wilkinson: No proper foundation has been laid for the question.

The Court: Overruled.

Mr. Wilkinson: I respectfully except.

Q. Did you hear the question and answer that I read to you? A. I heard that, sir.

Q. And did you make that answer? A. I did.

Q. "I would rather not mark it." A. I did, I did.

Q. That is People's Exhibit C for Identification. Do you still say that Mr. Ryan compelled you to make that confession?

The Court: So the record will be clear—I am sorry to interrupt you. So the record will be clear, did you refer to that exhibit——

Mr. Foley: I did, your Honor,

The Court: —by its exhibit number? 1700

Mr. Foley: People's Exhibit C for Identification.

The Court: All right.

Mr. Wilkinson: I object to this question as already been answered three times.

The Court: Repeat it.

(The Court Reporter reads question as follows: "Q. Do you still say that Mr. Ryan compelled you to make that confession?")

Mr. Foley: That is not a completed question.

Mr. Wilkinson: I thought it was completed.

The Court: Withdraw it and reframe it. 1701

Mr. Foley: Withdrawn.

Q. Do you still say that Mr. Ryan compelled you to make that confession and mark the pictures?

Mr. Wilkinson: I object to that as already answered.

The Court: Sustained.

Q. Were you at one time brought into Mr. Ryan's office when Haughton was there? A. I was.

Q. And you say you had a talk with Mr. Ryan before you went in? A. Before who went in?

Q. Before you went in. A. Before I went in?

Q. Before you went in to where Haughton was. A. I did not say I had no conversation with Mr. Ryan before I went in there.

Q. Did you have a conversation with him while you were in there? A. While I was in there?

Q. Yes. A. If you want to call it a conversation, sir.

1703

Q. Was that in the presence of Haughton? A. It was.

Q. Did Mr. Ryan ask you to persuade Haughton to make a statement? A. He told me, in other words, to wise him up, tell him exactly what happened to me and everything; tell him what my lawyer told me.

Q. And did you tell Haughton to make a statement or that he should make one? A. That he should make one? I did not, at no time. I didn't tell him he should make a statement.

Q. Did you say to Haughton in there: "I have told them all about it; I admitted I did the shooting?" A. No.

1704

Q. "Our friends have talked on us." A. No.

Q. "You might as well tell." A. No.

Q. You never said that? A. At no time, no, sir.

Q. But you did have a talk with him? A. Mr. Ryan let him go in the other room with me, sir.

Q. And you had a talk there with Haughton? A. I had a talk with him.

Q. And then you came back into the room? A. I did.

Q. And then were you seated next to Haughton? A. He told me to sit down.

Q. Were you seated next to Haughton? A. I was seated, sir.

Q. Next to Haughton? A. Next to him or behind him, more a bit behind him.

Q. And could you hear the questions that Mr. Ryan asked him? A. Yes, I could hear the questions.

Q. And the answers that he made? A. Yes.

Q. Did Mr. Ryan start to ask him these questions immediately after you and Haughton came back from your talk? A. No, sir.

1706

Q. How long after? A. I wouldn't say how long. Me and Haughton talked, sir. Mr. Ryan asked him about the girls and all that, the same thing I put in my confession.

Q. And was that before he got the Stenographer? A. That was before, sir.

Q. Was it in your presence? A. Was it in my presence?

Q. Yes; was it in your presence? A. Yes, at that time, yes.

Q. And did you join in that conversation? A. I did not join no conversation.

Q. You never made any remark at all? A. Of course not.

Q. And then Mr. Ryan sent for a Stenographer? 1707
A. Mr. Ryan sent for a Stenographer?

Q. Well, one came there? A. After him and Haughton had talked. I did not have anything else more to say.

Q. A Stenographer came there? A. Yes, he came there.

Q. That's right, and you were still seated next to Haughton, weren't you? A. I was sitting in the room, sir.

Q. You were still seated next to Haughton? A. I was seated in the same place.

Q. That was next to Haughton, wasn't it? A. Directly behind him, sir.

Q. How far away were you? A. Very close.

Q. How far? A. About from there to the secretary there.

The Court: Indicating a distance of what?

Mr. Foley: Three feet.

The Witness: About two feet. I could reach out and touch him, sir.

1709 Q. Did you hear Haughton tell Mr. Ryan that he had met you on the afternoon of the 13th of December? A. Yes, I heard him say that.

Q. Did you hear him say that he came to The Bronx with you? A. I heard him say that.

Q. Did you hear him tell how you got from the subway over to Webster Avenue? A. I heard that.

Q. Did you hear him say that you had the gun on you? A. I heard him tell that.

Q. Did you hear him tell that you both entered the store? A. I heard him.

Q. Did you hear him tell what happened when you got in there? A. I heard him.

1710 Q. Did you hear him say that you fired all the shots; he fired none? A. I heard that.

Q. Did you hear him say that he ran out of the place with you? A. I heard that.

Q. Did you hear him say that you wound up in some school yard in The Bronx? A. Yes, I heard that.

Q. Did you hear him say that he went over a bridge somewhere? A. Yes.

Q. With you? A. Yes.

Q. Did you hear him say that you gave him the gun? A. I heard him say that.

Q. Did you hear him say you separated and he took the gun downtown? A. I heard him say that.

Q. Did you hear him say that he looked up Adolph Clark and gave him the gun? A. Yes.

Q. Did you hear him say that he came to your house the next day? A. I really don't remember that, but I know it is a lie if I did hear him.

Mr. Foley: Will your Honor please direct the witness to answer the questions? 1712

The Court: I think he answered. I will let the answer stand.

Mr. Foley: All right.

Q. You heard him make statement after statement, mentioning your name as participating in this crime? A. I did, yes, sir.

Q. Did you ever state that it wasn't the truth? A. Did he ever state?

Q. Did you ever state that that was not the truth that he was telling? A. Did I state that? A. No, no, I didn't.

Q. At the conclusion of the statement did I have a talk with Haughton and you where you were seated? A. At the conclusion of the statement, Haughton and I? 1713

Q. That's right. A. I know you had a conversation with me and Haughton after, way after the statement was taken.

Q. When it was just finished? A. When it was just finished? I remember you instructing me. I went out and came back in and detectives hit me.

The Court: His statement or Haughton's statement?

Mr. Foley: Haughton's.

Q. When Haughton's statement was finished and the Stenographer rose and left, did I come over and talk to you two? A. I don't recall that, sir.

Q. Do you recall my saying to Haughton: "You have no grievance against Moore; he did the best he could to cover you up;" do you recall that? A. No, sir.

1715 Q. Do you recall you and Haughton then shaking hands as you sat in the chairs? A. I never shaked Haughton's hand, sir.

Mr. Foley: Thank you; that is all.

Cross-examination by Mr. Fleischman.

Q. Now, Moore, when you first went in to see Haughton— A. Yes, sir.

Q. —you had a talk with him, is that right? A. Yes, sir.

Q. Did you tell him what the lawyer had told you about the confession? A. Not right then, sir.

1716 Q. When was it you told him about it? A. After Mr. Ryan told me to hip him, to tell him exactly what happened to me and he won't get hurt and all that, and I said—he asked me did I want to see him get hurt. I said no, I don't want to see anybody get hurt.

Q. And did you tell Haughton when you spoke to him? A. I told Haughton exactly what the attorney told me and I told him the details of the thing, because I was instructed to tell him the de-

tails of it, so I told him that the attorney say if we wasn't guilty of the crime and he was our attorney, that the confession would get throwed out anyhow and he would get up there and tell the jury exactly what happened, taken place in the room, and that is what I told Haughton.

Q. Did you tell Haughton: "Go along or otherwise you would get beaten?" A. Yes, sir.

Mr. Foley: I object, if your Honor pleases.

The Court: Overruled.

The Witness: Mr. Ryan told me to tell him that.

1718

The Court: You answered the question.

Q. Mr. Ryan told you to tell him that? A. Yes, sir.

Mr. Fleischman: That is all.

Mr. Wilkinson: No questions.

The Court: Step down. Next witness.

(Witness excused.)

Mr. Wilkinson: If the Court pleases, before I call my next witness I would like to request the Court that if Detectives Foden, Farrell and Green are in the courtroom, they be excluded from the courtroom.

The Court: All right.

1719

Mr. Wilkinson: John Starnes.

1720 *John C. Starnes—For Defendants—Direct.*

JOHN C. STARNES, a witness in behalf of defendants, having been first duly sworn, stated that he resided at 1559 Southern Boulevard, Bronx, and testified as follows:

Direct examination by Mr. Wilkinson.

Q. Mr. Starnes, are you at the present time in The Bronx County Jail? A. I am.

Q. Will you keep your voice up now? A. I am.

Q. And you are awaiting sentence, are you not? A. I am.

Q. You had pleaded guilty to the crime of rob-
1721 bery, is that correct? A. I did.

Q. Now, are you acquainted with Eddie Mills and Arthur Moore? A. Well, not personally. I met them.

Q. Do you know them? A. Yes, sir, I do.

Q. And the Arthur Moore is not George Moore that is in this case, is that correct? A. No, he is not.

Q. And when were you arrested? A. December 28th, I think it was.

Q. 1946? A. That's right.

Q. By whom were you arrested? A. By Detectives Farrell and Foden.

Q. And were you questioned by Detectives Far-
1722 rell and Foden? A. I was.

Q. And were you questioned by Detectives Farrell and Foden with respect to the hold-up of Ray's liquor store at 1439 Webster Avenue? A. In regard to the hold-up itself?

Q. The killing of Detective Burke. A. Yes, I was.

Q. And were you questioned by them on a number of occasions? A. Yes, sir, I was.

Q. And were you advised by them that they had one Arthur Moore and Eddie Mills as the actual perpetrators of that crime?

Mr. Foley: Now I object, if your Honor pleases.

The Court: Objection sustained.

Q. Were you on occasions asked by Detective Foden to implicate Arthur Moore in the killing of Detective Burke? A. I was.

Q. And were you also asked on occasions by Detective Foden to implicate Eddie Mills in the killing of Detective Burke? A. I was not. 1724

The Court: What was the answer?

(The Court Reporter reads last answer.)

Q. Was there anyone other than Arthur Moore that you were asked to implicate in that killing? A. No, no one I can think of.

Q. He is the only one they asked you to implicate, is that correct? A. Yes.

Q. And that Arthur Moore is a person other than George Moore, the defendant, is that correct? A. Yes.

Q. Well, did they question you as to whether you were one of the men that was in on Detective Burke's killing? A. They did. 1725

Q. Were you at any time beaten by Detectives Farrell and Foden——

Mr. Foley: I object to that.

Q. —in order to obtain a confession from you with respect to that killing?

The Court: Objection sustained. Don't pursue it.

Q. Well, were you questioned by Detectives Farrell and Foden? A. At the 48th Precinct, I believe, the Bathgate Precinct, and also the Morrisania Precinct.

Q. And did they on occasions have you out around Bronx County; did you tour in an automobile? A. Yes, on several occasions.

Q. And did they on several occasions have you in a bar and grill? A. On one occasion.

1727 Q. And were they on that one occasion buying liquor for you? A. They were.

Q. And attempting to get you intoxicated?

Mr. Foley: I object, if your Honor pleases.

The Court: Sustained. Get down to this case.

Q. How many times did Detectives Farrell and Foden beat you in an attempt to get a confession?

Mr. Foley: I object to that.

The Court: The Court instructed you not to pursue that. Do you understand me?

1728 Q. Well now, when Detectives Farrell and Foden arrested you, to what precinct did they take you? A. Well, I was picked up several times before I was arrested.

Q. By whom? A. By the same detectives.

Q. And where would they take you when they picked you up? A. On the first two occasions I believe it was to the Morrisania Precinct, the one adjacent to the court on 61st Street.

Q. And how long did they keep you at the precinct? A. Oh, approximately five, six hours or so on the first two occasions.

Q. Five or six hours each? A. Yes.

Q. On each of the first two occasions, is that correct? A. Yes.

Mr. Wilkinson: Well, at this time I would like to leave this witness with the right to recall him.

The Court: No; finish your examination now.

Mr. Wilkinson: Well, I am precluded from pursuing a line which is material to the defendant. 1730

The Court: Show me one authority where the line you want to pursue is material; just one. I will give you time to show me. Proceed with your examination.

Mr. Wilkinson: I will discuss that point with your Honor if you want me to discuss it now.

The Court: No; show me an authority, I said.

Mr. Wilkinson: I will give you the authority of People v. Barbato in 254 New York.

The Court: That is my own case. I know it very well. 1731

Mr. Wilkinson: And I followed the case and that is my authority for the questioning of this witness pursuant to that line.

The Court: No authority in that case. Proceed now with an examination.

Mr. Wilkinson: In view of the fact that the Court refuses to permit me to pursue that line of questioning——

The Court: Just a minute.

Mr. Wilkinson: —with this witness——

The Court: The Jury will step upstairs. The Court will take a recess for five minutes. You can get the volume and bring it in to me.

(The Jury retires from the courtroom.)

(Messrs. Foley, Wilkinson, Fleischman, McDonough and Ehrman confer with the Court in chambers.)

(After a short recess the Jury returns to the courtroom.)

1733

JOHN C. STARNES, resuming the stand, testified as follows:

Mr. Wilkinson: May it please your Honor, in behalf of the defendant Moore I now urge upon the Court the fact that the line of questioning that has been pursued with this witness is material in that——

Mr. Foley: If your Honor pleases——

The Court: Are you satisfied the authority you gave me does not apply?

Mr. Wilkinson: I will not make that statement, Judge, that I am satisfied that the au-
1734 thority does not apply.

The Court: Very well. The Court holds that it does. That is all there is to it at this time. Now your own statement. What is it you want to say?

Mr. Wilkinson: I will take exception to the Court's ruling.

The Court: I foreclose you now from proceeding with that line you have indicated on

any grounds at all. The matter will not even be discussed now. Proceed.

Mr. Wilkinson: I respectfully except to the Court's ruling.

The Court: Take your exception.

Mr. Wilkinson: And may I ask that this witness be held so that I may recall him at some time before this trial is concluded if the proper foundation is laid?

The Court: Have you finished with your examination now?

Mr. Wilkinson: Yes, sir.

The Court: Any questions, Mr. Foley? 1736

Mr. Foley: Yes, I have some.

Mr. Fleischman: I want to take exception to your Honor's ruling in behalf of the defendant Lester Haughton.

The Court: And you maintain that that authority you gave me applies to this case?

Mr. Fleischman: Well, your Honor, the—

The Court: All right, I won't press the question.

Cross-examination by Mr. Foley.

Q. Starnes, you have stated that you were questioned concerning the killing of Detective Burke? A. I have. 1737

Q. And concerning the possible participation in the killing of Moore and Mills? A. The killing of Moore and Mills?

The Court: Will you please talk loud?

The Witness: I didn't hear the question myself.

1738 Q. I will repeat it. You were also questioned, I believe you said, about the participation in that killing, the participation of Moore and Mills in the killing of Burke. A. Of Moore, yes, but not Mills.

Q. You were never arrested and charged with the killing of Burke, were you? A. No, I was not.

Q. You haven't been indicted for it? A. I have not.

Q. Neither has this other Moore of whom you
1739 spoke, if you know? A. No, not to my knowledge.

Mr. Foley: That is all.

(Witness excused.)

The Court: Next witness.

Mr. Wilkinson: At this time, if the Court pleases, the defendant George Moore rests his defense.

Mr. McDonough: The defendant Lester Haughton.

Lester Haughton, a witness in his own behalf,
1740 having been first duly sworn, stated that he resided at 741 Jennings Street, Bronx, and testified as follows:

Direct examination by Mr. McDonough.

Q. Lester, up until February 8th of 1947, with whom did you live at 741 Jennings Street? A. My father.

Q. And what is your father's name? A. Cecil Haughton.

Q. And how long had you lived there at that address prior to February 8th, 1947? A. Since May, 1946; I don't recall the date.

The Court: Haughton; will you kindly keep your voice loud so that the gentlemen can hear you?

The Witness: I am sorry.

Q. Lester, did you attend elementary school in the City of New York? A. Yes, sir, I did.

Q. And do you recall the last elementary school 1742
that you had attended here? A. 49, I believe, in The Bronx.

Q. And you attended P. S. 48 in The Bronx while you were at the Riverdale Orphan Asylum, is that correct? A. That's right.

Q. At the time you were in the Riverdale Orphan Asylum, when you first went into the asylum, your father and mother had separated, is that correct? A. That's right.

Q. And shortly after your mother and father separated and while you were at the Riverdale Orphan Asylum, your mother died? A. That's correct.

Q. How old were you at the time that your 1743
mother died? A. Twelve, I believe.

Q. Now, subsequently did your father remarry? A. Yes, sir, he did.

Q. And after your father re-married did you go there to live with your stepmother? A. Yes, I did.

Q. And what school did you attend then? A. Cooper Junior High School.

Q. And where is that located? A. On 116th Street between Lenox and Fifth Avenue.

Q. Did you graduate from Cooper Junior High School? A. Yes, I did.

Q. Did you then go to high school? A. Yes, I did.

Q. And what high school did you attend? A. Central Commercial High School.

Q. And how long did you attend Central Commercial High School? A. I would say about a year.

Q. And while you were at Central Commercial
1745 High School did you have any trouble? A. Yes, I did.

Q. And you had pleaded guilty to a charge? A. Yes, I did.

Q. And what was that charge? A. Misdemeanor.

Q. And what was the nature of it? A. Possession of a firearm.

Q. And at that time thereafter pleading guilty, did you go to Coxsackie? A. Yes, I did.

Q. And how long did you stay there? A. Till 1940.

Q. How old were you at that time? A. At the time?

Q. That you pleaded guilty to the misdemeanor.
1746 A. Sixteen.

Q. After you came out of Coxsackie, did you go to work? A. Yes, sir, I did.

Q. Where did you work? A. In Jamaica, Long Island. I went to live with my aunt in Jamaica, Long Island.

Q. You were living with your aunt in Jamaica? A. Yes.

Q. And where did you work? A. I worked in a sheet metal establishment. I only worked there for about three weeks. I don't recall the—I know it was off Rockaway Avenue and Liberty Avenue, Liberty Avenue off Rockaway Road.

Q. And then subsequently did you go back to Coxsackie for violation of your parole? A. Yes, I did.

Q. Is that the time you got into some trouble about a gum machine on the subway station? A. That's right.

Q. Did you plead guilty to petit larceny at that time? A. I did. 1748

Q. And then you came out of Coxsackie, is that right? A. That's true.

Q. And did you go to work again? A. Yes, I did.

Q. Where did you work? A. I had a job with Miss—first I worked, first I went to C.C. camp and I came out C.C. camp and I went to 575 Seventh Avenue for Victor Duis Trucking Corporation. Then I went, then I got a job over on the docks in New Jersey, Weehawken, New Jersey, working for the Erie Railroad over there.

Q. And during this time with whom were you living? A. I was living with my father.

Q. You were back home with your father again? A. That's right. 1749

Q. Now, at that time did you have any difficulty with your arm? A. Yes; I did.

Q. Now, were you subsequently—did you subsequently plead guilty in another charge in 1942? A. I did.

Q. What was that charge? A. Robbery.

Q. And did you serve time in prison for that? A. I did.

Q. And where did you go? A. Elmira Reformatory.

Q. And when did you get out of Elmira? A. 1946, May.

Q. In May, after you got out of Elmira did you go to work? A. Yes, I did.

Q. And where did you work? A. For Mr. William Riedler, 308 East 167th Street.

Q. What type of business was he in? A. Sheet metal and roofing.

Q. How long did you work for him? A. Up until about November.

1751 Q. And at the time you left his employment did you then go into the hospital? A. While I was in his employ I went to the hospital.

Q. What hospital did you go to? A. Hospital for Joint Disease.

Q. Where is that located? A. 123rd Street and Madison Avenue.

Q. And did you have an operation on your arm at that hospital? A. I did.

Q. While you were at the hospital did you meet a girl who was employed there? A. Yes, I did.

Q. And what was her name? A. I met numerous girls.

Q. Virgie Lee? A. Virgie Lee Johnson.

Q. Virgie Lee Johnson? A. That's right.

1752 Q. She was employed there, is that right? A. That's right.

Q. What was the nature of her employment? A. She was an attendant.

Q. When did you leave the hospital? A. In August of 1946.

Q. And after you left the hospital did you go back to work again? A. Yes, I did.

Q. And with whom; by whom were you employed at that time? A. I went back to work for Mr. Riedler.

The Court: Is that Riegel?

The Witness: Riedler, R-i-e-d-l-e-r.

Q. After leaving the hospital did you see this Virgie Lee Johnson? A. Yes, I did.

Q. How often did you see her? A. Numerous times.

Mr. Foley: I object to that, if your Honor pleases. 1754

Mr. McDonough: I will connect it, Judge.

Mr. Foley: If you please.

The Court: Proceed. Do you withdraw the objection?

Mr. Foley: I will withdraw the objection, yes, sir.

Q. Where did Virgie Lee Johnson reside? A. She, first she was living on Madison Avenue, no, Park Avenue and 120th Street and I believe it was, and then so she moved to The Bronx.

Q. And whereabouts in The Bronx did she live? A. On Brook Avenue.

Q. And whereabouts on Brook Avenue, do you recall? A. No, I don't; I really don't. 1755

Q. Now tell me, did you on any occasion visit Virgie Lee Johnson in the company of Adolph Clark? A. I did.

Q. And can you tell us when that was? A. That was the first week in December, I believe.

Q. And when you went to visit Virgie Lee Johnson with Adolph Clark, where did you leave from

to go to her home? A.-I left from my brother's house, 135th Street.

Q. And you proceeded up there? A. That's right.

Q. Now, you heard Adolph Clark testify to a conversation which he had with you on that occasion of that visit, concerning a liquor store on Webster Avenue; now, do you recall having a conversation with Clark on that occasion? A. Not a conversation.

Q. Will you tell us what happened? A. Well, we went to see these girls and it was about ten thirty, I believe, and I went up there, it was kind 1757 of late. She was a working girl and I stood at the door, talking to her for a little while and Clark was standing behind me. We didn't go in the house; talking for about fifteen, twenty minutes, you know, and I left the house and I had to go back downtown to pick up some working clothes of mine, because I was supposed to get a job, working for another man, another sheet metal place on 168th Street, I believe, and so I told him: "I am going back downtown." He said: "Come on, we go down together," because he was getting ready to leave me. He said he didn't know his way around there. I said: "I don't know my way either." We came out from Brook Avenue till 1758 we hit Webster Avenue. I believe it was one block away from us and we walked, we were walking. We looked up till we saw the bus running by there. I said: "Maybe that is the way we go down to catch the bus to go to the Eighth Avenue subway." So he said: "Let's go up that way." So we was walking by and we passed a liquor store, so he said: "Here is an easy store here." I said: "Yes," and we walked past it.

Q. Did you ever have any further conversation with Adolph Clark concerning that liquor store or any other liquor store? A. No, sir. 1759

Q. Now coming down to the night or the day of December 13th, 1946, did you see at any time that day Adolph Clark and George Moore? A. I believe I did.

Q. And what time would you say that you saw them that day? A. About four o'clock. I don't recall, I mean.

Q. And where did you see them? A. The usual place; I usually see them around the pool room or on the corner there and walking around the streets some place. 1760

Q. Well, at that time did you ever leave this pool room in the company of either Adolph Clark or in the company of George Moore or in the company of both of them? A. No.

Q. Well, you left the pool room, didn't you? A. Yes I did.

Q. And did you leave with anyone? A. Not that I can recall.

Q. Well now, can you tell us where you went when you left the pool room? A. Well, I believe I stayed there until about five o'clock, till the last figure came out, and I went across the street and went up to my brother's house.

Q. And where does your brother live? A. 276 West 135th Street. 1761

Q. How long did you stay at your brother's house? A. Till about ten o'clock. I ate there.

Q. You had supper there? A. Yes, sir, I did.

Q. And then when you left your brother's house where did you go? A. I went home.

Q. To 741 Jennings Street? A. That's right.

Q. And whom did you see at your home? A. My father and Miss Wiley.

Q. Did you thereafter go to work? A. Yes, I did.

Q. And where did you work? A. Hospital for Joint Disease.

Q. When had you made application for the job in the Hospital for Joint Diseases? A. I believe it was the first week in December, around December 5th.

Q. And when did you start working there? A. December 15th.

1763 Q. And what were your duties or what was the nature of your employment at the Hospital for Joint Diseases? A. I was an orderly.

Q. And were you working there right up to February 8th of 1947? A. I was.

Q. Now, do you recall February 8th, 1947 at about one o'clock in the morning? A. I do.

Q. Where were you about that time on February 8th? A. In the bed.

Q. At home? A. Yes.

Q. And who was home with you? A. My father.

Q. And do you recall the police officers coming to your home? A. I do.

Q. Will you tell us what happened? A. I came
1764 home about, say about eleven o'clock, twelve o'clock. I brought some ice cream home with me.

Mr. Foley: If your Honor pleases, I object to this as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Foley: The question was what happened when the police officers came.

The Court: Overruled. I will permit it.

The Witness: I was, I laid in bed and I was almost drowsing off and one of the girls who roomed there, she came and told me somebody wanted me on the phone. I got up and put on my bathrobe and slippers, went to the hall. It was a hall. There is table in the hall, a telephone on it and right next to it is a door. I picked up the phone. I didn't hear nothing on the phone, so I put it back down. 1766

Q. Let me interrupt you at this time. Did you speak with anyone on the telephone at that time? A. No, I didn't.

Q. All right, continue. A. I put the phone back down and I heard somebody knock on the door. I said: "Who is there?" Somebody said: "Telegram." When I opened the door a bunch of officers with drawn pistols grabbed me. One of them slapped me aside my head and knocked me down and told me to get up. He said: "Stand where you are." I asked: "What is the matter?" He said: "You know what is the matter," and started cursing loud and my father got up and he asked me what was the matter. By the time they shoved me in my room and 1767 when I got back in the room they started tearing the place, looking around, pulling out this and pulling out that. My father said: "What is the matter?" They said: "Shut up; keep quiet. Just sit where you are. Mind your business." They asked him who lived there. My father said I stay there and he stayed there. So he said:

"Whose stuff is this? Where is his stuff?" He said he was looking for a pistol. He asked my father if I had any pistol, so my father told him no, that he didn't think so; he didn't see none in here. Everything in here was visible to him and he had access to everything. Then they told me to take off my clothes. I only had my bathrobe and pajamas. They made me stand before, naked. Then he told me, he says: "You stole some car and we are going to have somebody," they have somebody down the District Attorney's office "that wants to identify you," or something like that. So I told him: "I don't
1769 know nothing about no car," that I couldn't drive. So he says: "That's all right, you know what we want you for anyhow." So he told me to stand back and I asked him, I said: "Can I put on my clothes?" He said yes. I went to reach for my clothes and he hit me on the side of the head. He told me: "Don't make a move or "he will put a bullet through me. He said: "We will hand you the clothes" and he handed me the clothes piece by piece. I put on my clothes. Then he took me outside. In the meantime, this woman came in. She had been sitting in the hall and we all went downstairs and the car was parked across the street. While I was going
1770 across the street, one of the detectives, I had only one detective by me, he had the pistol in my back and he told me, he said: "Go ahead and run. Go ahead, run. We want to put a bullet in your head," softly. He was whispering to me. I told him I didn't want to run for nothing. He said: "All right." They carried me inside the car. They started the car up and drove down to Prospect Avenue. They had an accident there.

Another car hit the car we was in and the car stalled. So the girls, the girl and the two men who were in the front got out and went to get somebody to push us. So they was out of the car. While they was out of the car the man who was on my right, he said: "Go ahead. We want you to get out and run, so we can put a bullet in you. I will make sure it will be real quick." I said: "What for?" and he knocked my stomach with his pistol. He said: "You cop killer, you." I said: "I don't know anything you are talking about." By that time the girl came back to the car and she said: "Maybe we 1772
can get the bus to push us." So one of the men went to get someone to push and the policemen started to push us. He said: "When we get over to the District Attorney's office," one of the detectives told me: "When we get to the District Attorney's office we are going to carry you down the basement" and he said he was going to whip me "if you didn't tell the District Attorney what we wanted." I said: "I don't know what you are talking about: I still don't know what you are talking about. You are talking about a car or you are talking about what you just said." He said: "You know what we want." I told him I didn't know. Anyhow, they got the bus to push us and we got to the District At- 1773
torney's office.

Q. And when you got to the District Attorney's office what room were you taken to? A. I was taken to the—I was taken down the hall.

Q. To Mr. Ryan's office? A. I don't recall exactly what room I first went. I was in two rooms, I believe. I went in a room. There was a bunch of chairs there, a bunch of people. So

in the room somebody told me to sit down. I don't recall what room that was.

Q. Then did you eventually go to Mr. Ryan's office? A. Yes, I did.

Q. Now, did Mr. Ryan ask you questions while you were in his office? A. Yes, he did.

Q. And this was before the Stenographer was called in? A. That's right.

Q. And how long did Mr. Ryan question you before the Stenographer was called in? A. I would say about half an hour, three-quarters of an hour.

1775 Q. And at the time that Mr. Ryan questioned you did he tell you or I will withdraw that, Mr. Ryan in questioning you, did he answer questions, make statements of facts?

Mr. Foley: I object, if your Honor pleases.

The Court: Let the witness testify. Sustained.

Mr. Foley: It is leading.

The Court: Let the witness testify.

Q. What did Mr. Ryan ask you there while you were in his office before the Stenographer came in? A. Well, as soon as I came in he told
1776 me to sit down and he says: "What is your name?" I told him my name was Lester Haughton. He said: "No, your name is Raymond." I told him no. I said: "I am known by the name of Raymond, but my name is Lester." So he said: "Where were you on the night of the 13th, of December 13th?" I told him I couldn't recall right offhand. So he said: "Well, do you know George Moore?" I said no, I didn't know George Moore. He said: "Do you know Adolph Clark?"

I said; yes, I did. He asked me if I knew Mack, knew a boy by the name of Mack. I told him I didn't. He said: "Well, do you know what we have you here for?" I said: "No, sir." So he showed me a picture of the liquor store. He said: "Don't you recall this?" I said: "No, sir." He said: "Don't you recall on the night of the 13th when you and George Moore went up to The Bronx on the Eighth Avenue subway?" I said: "No, sir." "Don't you recall going into Ray's liquor store?" I said: "No, sir, I don't know where Ray's liquor store is." So he said: "Don't you recall going in there and 1778
there was a lot of shooting and you ducked behind the counter and you ran out?" I said: "No, sir." "You mean to tell me you don't recall this?" I said: "No, sir." He said: "Adolph says you went up there and that Moore—and Moore said it." I said: "Which Moore?" He said: "Stack, you know Stack?" I said: "Yes, I know a fellow named Stack, but I don't know nobody named Moore." He said: "Oh, you know Stack. Stack, that is who I am talking about. You and Stack went up there and you went to the liquor store and you stuck it up. You can across the bridge. Where there was the bridge or school yard, he gave you the gun. Don't you recall him giving you the gun?" I said: "No." 1779
He said: "Well, he did give you a gun, didn't he?" I said: "No, sir." He said: "Don't you recall Stack got shot in the arm, that you gave the gun to Adolph?" He said: "We have it all down here" and he showed me some paper he had with some typewritten marks on it, typewritten words written on it and he showed me the pape.

had my name up top. He said: "Here is a picture, your picture." So he even said that "you was the one that was there with Stack." He said: "We have everything. You might just as well come clean." I told him I did not know what he was talking about. He asked me, he said: "Would you like to see Moore?" I said: "Yes, sir, I would." So they brought Moore in and they asked him, I don't know what they asked him, but as soon as he came to the door, they asked him to say: "Is that Raymond?" something like that. He said: "Yes, that is Raymond." Then they carried him back out. Then they carried me,
1781 then they told me, they said, well, they were laughing: "We don't want to waste any more of your time," something like that, and they brought Stack in. They brought Stack back in and he sat down beside me. He told me, he says: "Man, you better get this. You better tell them what they want or they will whip you. The lawyer told me everything is all right; you don't need to worry about it. We will wash this out. That statement isn't, doesn't mean anything." So I told him: "I still don't know what you are talking about, man." So they brought, after that they carried him out and Mr. Ryan asked me, he said: "Do you want to make a confession
1782 now? Do you want to say that you was there? Don't you want to say it?" I said: "No, sir." So he said: "Bring Stack back in." They brought him in and they sat him down beside me and Mr. Foley here asked me, he says: "Do you mean to tell me that Stack is a liar?" So I told him: "Yes, sir, if he said I was with him or if he said —I don't know nothing about this what he is talking about." So he said well, he said, he said:

"Well, they take—" He said: "Come clean now" or something like that; I don't know. My mind is pretty hazy on it, just how it went. Anyhow, Mr. Ryan kept on questioning me, kept on questioning me and at that time Mr. Foley said: "Let me take over from here" and he came over and he started asking me some questions and Mr. Ryan raised his hand like that to some detectives or some people who were in the room, walked out. One of them was the detective who had hit me in the stomach. He said: "Don't forget what I told you. I will blow your brains out," just like that and he walked out. When he walked out then he, Mr. Ryan said, he laughed, smiled on me, he said: "Come on, tell me what you want; tell me what we want; just sign it, just say that you was there; that is all." I told him I wasn't going to sign it. He kept on telling me. Finally I told him: "Yes, I was there."

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The Court: What is that?

The Witness: Finally I told him I was there.

Q. And then they brought in a Stenographer, is that right? A. That's right.

Q. Now, when the Stenographer came in you were asked certain questions by Mr. Ryan, were you not? A. That's right.

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Q. And were those questions substantially the same questions that you had been asked before the Stenographer came in? A. That's right.

Q. And during the time before the Stenographer came in, you had denied or said no to the questions that he put to you? A. That's right.

Q. And told you that you hadn't been up to the liquor store on December 13th?

Mr. Foley: I object, if your Honor pleases, to the form of the question. It is a review of his statement.

The Court: Is this a recapitulation?

Mr. McDonough: It is, Judge.

The Court: Sustained.

Q. So that all those questions which were asked on the statement which you subsequently signed were asked of you before the Stenog-
1787 rapher came in, is that correct? A. That is correct.

Q. And you had denied ever being up to Webster Avenue on the night of December 13th? A. That's correct.

Q. Now, on December 13th, 1946 were you ever up at Ray's liquor store on Webster Avenue? A. No, I wasn't.

Q. And were you with Stack or with Adolph or anyone else at the liquor store at 1439 Webster Avenue on December 13th? A. No, sir.

Q. Did you have anything to do with a hold-up of that store? A. No, sir.

Q. Now, did you see Adolph Clark on Decem-
1788 ber 13th or the early morning of December 14th of 1946? A. I don't recall, I mean.

Q. Did you ever given a gun to Adolph Clark? A. No, I didn't.

Q. Did you ever have a gun on December 13th, 1946? A. No, sir.

Mr. McDonough: That is all.

Cross-examination by Mr. Foley.

Q. Haughton, how long before December 13th was it that you came to The Bronx with Adolph Clark? A. How long what?

Q. How long before December 13th was it? A. Oh, I would say the first week in December, somewhere around there.

Q. And is that the occasion on which you saw the liquor store? A. Yes, I saw some liquor store up there. I believe it was the same liquor store.

Q. And there was some discussion about it between you and Clark? A. Not a discussion, no.

Q. Did Clark say to you "it looks easy"? A. 1790
He did.

Q. And you said you thought so too? A. No, I didn't.

Q. What did you say? A. I just smiled and walked away, kept on walking, just passing the store.

Q. And it was never mentioned again? A. No.

Q. And you didn't go back there on the 13th of December— A. No, I didn't.

Q. —with Moore? A. No, I didn't.

Q. On the afternoon of the 13th of December were you with Moore and Clark in the pool room? A. I believe I was, I mean.

Q. Did you state to your Counsel a few min- 1791
utes ago that you stayed there till the last number came out? A. Yes, sir, I did.

Q. So you remember the 13th of December? A. I remember the date.

Q. Where did you go when you left the pool room? A. Went across the street to my brother's house.

Q. What time did you get there? A. Oh, I would say about quarter after five.

Q. And you stayed there till ten o'clock that night? A. That's right.

Q. Where were Moore and Clark when you left? A. I didn't notice, I mean it had no significance to me. I didn't notice.

Q. You were with them during the afternoon, weren't you? A. I wasn't with them. I was in there. I saw them.

Q. Had they left before you? A. I don't recall.

Q. Were they together during the afternoon, Clark and Moore? A. I don't recall.

1793 Q. Did you speak to them during the afternoon? A. I believe so.

Q. Were you with them when the last number came up? A. We were all in the pool room, I mean many fellows.

Q. Were you with them in their immediate company when the last number went up? A. If they were in there, I was with them.

Q. Did either one of them get a hit? A. I don't recall.

Q. Did you? A. No, I don't think I did.

Q. Now, when you heard a knock on the door and you opened it at your home on the early morning of February 8th, officers came in? A.

1794 That's right.

Q. They had their guns drawn? A. Yes.

Q. And immediately struck you? A. As soon as I opened the door they pulled me outside and hit me.

Q. Did they ask you who you were? A. No.

Q. They just—what did they slap or punch, what did you say? A. He hit me with his pistol. He had his pistol in his hand like that and he hit me.

Q. Where? A. The side of the head.

Q. That was without— A. This side.

Q. That was without inquiring who you are at all? A. That's right.

Q. You opened the door and the officer hit you? A. That's right.

Q. Did he have a conversation with you then? A. What?

Q. A talk with you? A. No. You see, when I answered the door, the phone is right next to the door. When I went to the phone, the girl in the hall, the girl had called me and said: "Raymond, you are wanted on the phone." I went to the phone and I picked it up and I said: "Hello." I didn't hear anything on there. I put the phone down. Somebody knocked on the door and said: "Telegram." I asked, when they knocked on the door I asked who it was. He said: "Telegram." I opened the door and they pulled me out and hit me with the pistol and knocked me down. 1796

Q. Did they ask you: "Is your name Haughton?" A. No, didn't anybody ask my name.

Q. You just answered the door? A. As soon as I answered the door I was yanked outside and hit with a pistol.

Q. Did you show them where your room was? A. Yes, I did.

Q. Did they search it for a pistol? A. Yes, they did. 1797

Q. Did they find one? A. No.

Q. How long do you think it was from the time you opened the door until you were dressed and left the house in company of the officers? A. I would say about half an hour, maybe a little less. I don't recall.

Q. About a half hour? A. About, maybe a little less.

Q. How long would you say it took you to make the trip from your home to the District Attorney's office by car that night? A. Well, the car got stuck.

Q. Yes, I know, but how long do you think altogether is your best recollection. That was a bad night, wasn't it? A. It was a bad night. About a half hour.

Q. A real heavy snowfall? A. About a half hour, three-quarters.

1799 Q. And when you got to the District Attorney's office how long were you in another room before you saw Mr. Ryan? A. Well, I came down the hall and I stopped some place.

Q. Some room? A. Some room. I stopped there. I know I stopped there just for a little while and they said: "Come on now."

Q. That is what I want to know, please. How long were you there about? A. About two minutes, I would say, a minute.

Q. It wasn't a half hour? A. No, nothing like that.

Q. Then you went to Mr. Ryan's room? A. That's correct.

1800 Q. And an officer struck you as soon as you opened the door? A. In my house.

Q. And then when you reached for your clothing to get dressed, another one struck you? A. When I reached for my clothes.

Q. Where did he hit you? A. He hit me the side of the head too.

Q. With a gun? A. With his pistol.

Q. With his pistol? A. That's right.

Q. Did either of these blows with the pistol on your head break the skin or cause you to bleed? A. No. It bruised my face.

Q. On which side did the first fellow hit you? A. Hit me here.

The Court: Indicating the left.

Q. And the next fellow? A. He hit me more or less on the head.

The Court: Indicating the rear.

Q. But you didn't bleed from either of those 1802
wounds, did you? A. No, I didn't.

Q. Then you got a third blow, I think you said in the car, in the stomach with a gun.— A. That's right.

Q. —is that correct, and you were several times invited to get out and run so that they would have an excuse for shooting you? A. I was.

Q. And from the time you got in the District Attorney's office in this room where you stayed for about two or three minutes, did anybody strike you there? A. No, they didn't.

Q. And then you were taken to Mr. Ryan's room? A. Yes, sir, I was.

Q. Did anybody strike you while you were in 1803
Mr. Ryan's room? A. No, they didn't.

Q. While you were there Stack was brought in, wasn't he? A. That's correct.

Q. And when I say Stack, or when you say Stack, you mean George Moore? A. That's right.

Q. Did George Moore say to you there: "You might as well tell them all about it; I have told them about my part in it; I admitted that I did

the shooting; our friends have talked on us; you might as well tell?" A. No, he didn't.

Q. He never said that to you? A. No, he didn't.

Q. He didn't say that to you in my presence? A. No, sir.

Q. You never made any statement—pardon me. Everything that Mr. Ryan asked you about your being in this crime you denied up to the time Stack talked with you, isn't that true? A. After he talked with me too.

Q. I think you misunderstand me. Oh, I beg your pardon. After he talked to you too? A. That's right.

1805

Q. Did he talk to you a second time before you admitted any part in this thing, Stack? A. Well, after——

Q. No. Did Stack talk to you a second time before you admitted any part in this thing? A. Stack talked to me, he told me, the first time he talked to me.

Q. No.

Mr. Foley: If your Honor pleases, I would like the witness instructed to answer the question.

The Court: Repeat the question.

(The Court Reporter reads question as
1806 follows: "Q. Did Stack talk to you a second time before you admitted any part in this thing?")

The Court: Yes or no.

The Witness: Yes, he did.

Q. And after he talked to you a second time did you then make your first admissions right

after he spoke to you? A. Right after he spoke to me?

Q. After Stack spoke to you the second time. A. Do you mean to say that after Stack asked me the last time, told me the last time, said: "You better go ahead or else you will get hit;" do you mean after he made that statement?

Q. I will withdraw the question and reframe it. Stack did speak to you a second time in Mr. Ryan's room, is that correct? A. Yes, he spoke to me.

Q. After he spoke to you, was it then that you began making admissions concerning this Burke killing? A. It was after the officers left the room. 1808

Q. Was it after Stack had spoken to you a second time? A. I believe it was. Yes, it was.

Q. Was it immediately afterwards or was there some time passed? A. It was after the officers left the room.

Q. Was it immediately after Stack spoke to you?

The Court: Answer that question.

A. Not immediately, I wouldn't say immediately like that.

Q. Well, some time passed? A. About—that's when you said: "Let me handle this."

1809

Mr. Foley: If your Honor pleases——

The Court: You are only to answer questions asked of you. If you don't understand them, indicate it. Pay attention to the question and don't volunteer.

The Witness: Your Honor,——

The Court: Listen. You went to high school?

The Witness: Yes, I did.

The Court: You understand me when I say to you answer questions directly?

The Witness: Yes, sir, I do.

The Court: Do that.

Mr. Fleischman: Will your Honor instruct the witness also if he doesn't understand to please ask.

The Court: I think I did that, didn't I? In any event, if I did not, if you don't understand the question, indicate that. Proceed.

1811 Q. How much time would you say passed after Stack had spoken to you for the second time before you began to make admissions? A. I would say about a minute.

Q. Thank you. I believe you said to Counsel that Mr. Ryan asked you questions about this case. A. He did.

Q. And how long after this second time with Stack did Mr. Ryan bring in a Stenographer? A. How long after what?

Q. You had a talk with Stack. A. Yes.

Q. A second time. A. That's right.

Q. About a minute later you began making admissions concerning the Burke killing, isn't that correct? A. Yes, I told him, yes, sir.

1812 Q. Was there a Stenographer present then or did Mr. Ryan ask you questions and get answers before he brought in a Stenographer? A. He called for a Stenographer.

Q. Right then? A. I don't know when he called for him. I know a Stenographer came there.

Q. Do you know whether or not you were asked any questions and made any answers before a Stenographer came? A. I believe I did.

Q. Did you say to Counsel that the questions that were asked before the Stenographer came were substantially the same as those that were asked in his presence? A. That is correct.

Q. And were the answers you made substantially the same? A. That is correct.

Q. The answers made to Mr. Ryan's questions before the Stenographer came were substantially the same as those answers you gave to the same questions when the Stenographer was there? A. Well, the questions that Mr. Ryan asked me, Mr. Ryan didn't ask me any questions.

Q. Just a minute. A. He made statements to me; Mr. Ryan told me. 1814

Q. Just a minute, please.

Mr. Foley: I ask your Honor to strike that out and ask the Jury to disregard it.

The Court: Denied.

Q. Mr. Ryan asked you questions before the Stenographer came there, didn't he? A. No. He told me about it.

Q. Didn't you testify a moment ago that he did ask you questions? A. Well, I didn't understand.

Mr. Fleischman: If your Honor pleases, I object to this. The testimony speaks for itself, and the witness didn't testify that Mr. Ryan asked him questions and he gave him the same answers as he did when the Stenographer was called in. The testimony indicated that he said that Mr. Ryan made certain statements to him before the Stenographer was called in, which he denied any participation in this killing. 1815

The Court: All right, proceed.

Q. Did you testify a few moments ago that Mr. Ryan asked you questions before the Stenographer came in? A. He asked me statements. He made statements to me.

Q. Just a moment.

Mr. Foley: Will your Honor direct this witness to answer my questions?

The Witness: Yes, he did ask me questions.

The Court: Go back and read the record.

(The Court Reporter reads question and
1817 answer as follows from previous page: "Q. Do you know whether or not you were asked any questions and made any answers before a Stenographer came? A. I believe I did.")

Q. Did you also testify a few minutes ago that the questions you were asked before the Stenographer came in were substantially the same as the ones you were asked after he came in?

Mr. McDonough: If your Honor pleases, I object on the grounds that the questions or the statements that were made prior to the Stenographer coming in were testified to directly by the witness.

1818 The Court: I don't understand you.

Mr. McDonough: The witness testified as to what conversation there was between Mr. Ryan and the defendant before the Stenographer came in. He testified directly as to the conversation.

The Court: Mr. Foley has a right to cross-examine as to what was done at that point. You are talking about your direct case?

Mr. McDonough: I am talking about on the direct case.

The Court: That doesn't confine or restrict Mr. Foley on his cross-examination as to questions asked of this witness. Proceed, Mr. Foley.

Q. Did you testify in answering some of my questions that the answers you gave after the Stenographer came in were substantially the same as those you had given Mr. Ryan before the Stenographer came in? A. No.

Q. Didn't you testify to that here just a few moments ago? A. The questions Mr. Ryan asked me, didn't I do so and so? 1820

Q. Just a moment. A. When he asked me the questions.

The Court: I will permit the witness to explain himself.

The Witness: When Mr. Ryan asked me questions he said: "Didn't you do this here and didn't you do this here?" Then when he asked me questions on the statement there, he phrased it a different way.

Q. Well, were the only answers that you gave Mr. Ryan before the Stenographer came in yes and no? A. No, yes, that's right. 1821

Q. He asked you a question so framed that you could say yes or no to it, is that right? A. That's right.

Q. And when the Stenographer came in he asked different questions? A. Not different questions.

Q. In a different way? A. In a different way, different manner.

Q. And you made the answers not yes or no, but in your own language? A. Yes, that's right, according to the way he said things happened.

Q. Did you put anything in that statement that Mr. Ryan had not told you? A. What do you mean, had not told me?

Q. Did you put anything in your answers when the Stenographer was there that Mr. Ryan had not told you about? A. Yes, I did.

Q. What? A. My name, my address.

Q. Didn't Mr. Ryan tell you your name? A. I mean, I don't recall.

1823

The Court: When you first came——

The Witness: I don't recall what the statements were, what the questions were, anyhow, but I believe there is something in there that I put in myself. I don't know.

Q. Would you know it when I come to that? A. I believe I would.

Q. After you had a talk with Stack about a minute before you began making admissions, was Stack taken out of the room? A. No, he was in the room.

Q. Did he sit with you through the Stenographer's, the statement the Stenographer took?

1824 A. He sat in back of me.

Q. How far away? A. About the distance between there.

Q. Was he directly behind you or somewhat to the side? A. To the side of me.

Q. How was he dressed? A. The way he is dressed now.

Q. Had his shirt on? A. Yes, he did.

Q. And his coat? A. Yes.

1825

Q. Do you recall Mr. Ryan asking of you: "Did you come up to The Bronx on the evening of Friday, December 13th, 1946?" and did you answer to him: "Yes, I did?" A. Yes.

Q. Did he say to you: "Who did you come up to The Bronx with?" and did you answer: "Stack?" A. Yes.

Q. Did he ask you this question: "By Stack do you mean this man seated here alongside of you, George Moore?" and did you answer: "That's him?"

The Court: Don't shake your head.

1826

A. Correct.

Q. Did he ask you: "Is he known by the nickname Stack?" and did you say: "Yes, sir?" A. Yes, sir.

Q. Did he ask you: "Where had you met Stack" and did you answer: "135th Street and Eighth Avenue?" A. I believe I did.

Q. Did he ask you then: "West 135th Street and Eighth Avenue in New York City?" and did you answer "Yes?" A. That's correct. All those questions there he asked me, I answered.

Q. Thank you.

The Court: Were you asked that question?

1827

Q. Were you asked that one and did you make that answer? A. No, I wasn't. The question just——

Q. The question I read to you is the one I mean, not one I put to you. Were you asked: "West 135th Street and Eighth Avenue in New York City?" and did you answer: "Yes?" A. Yes.

Q. Did he ask you: "About what time had you met him that day?" Ryan meaning Stack, and did you answer: "I don't remember?" A. I believe so. I believe so.

Q. Is that answer "I don't remember" one that Mr. Ryan suggested to you or is that one that you put in yourself? A. That is my own wording.

Q. Were you free to answer in your own wording anyway you wished when you made this statement? A. I was.

Q. Question: "Well, what is your best recollection?" Answer: "About four o'clock in the afternoon." Were you asked that question and did
1829 you answer that way? A. I believe so. I said I believe I did.

Q. If I come to any answer, Haughton, that you recognize as being entirely your own, will you please indicate it to me? A. Yes, I will.

Q. Thank you. Did he ask you then: "And did you meet anybody else down in Harlem when you were with Stack before you came to The Bronx?" and did you answer: "No, I didn't?" A. Yes, I believe so.

Q. Did he then ask you: "Do you know anybody by the name of Adolph Clark?" and did you answer: "Yes, I do?" A. Yes, sir.

Q. Did he then ask you: "Had you met Adolph
1830 Clark while you were with Stack?" and did you answer: "Oh, yes?"

The Court: Don't shake your head.

A. Yes, I did. I am sorry.

Q. Were you asked: "Where had you met—pardon me. Where had you and Stack met Adolph?" Answer: "35th Street?" A. That is correct.

Q. Question: "The three of you met together?" Answer: "Yes." A. Yes.

Q. Did he ask you: "Was it by appointment?" and did you say: "No, we always seen one another around there?" A. That's correct.

Q. Was that your own answer? A. That is correct.

Q. It wasn't anything Mr. Ryan suggested to you, was it? A. Well, the whole thing was suggested to me more or less.

Q. Just a minute.

Mr. Fleischman: If your Honor pleases, the witness is trying to answer. 1832

The Court: Overruled. He may answer that question. Was that suggested to you by Mr. Ryan?

Q. Was that answer suggested to you? A. The whole thing was suggested to me.

Q. Please answer my question. Was that answer suggested to you? Shall I read it again? A. It was more or less put, planted in my mind. If I was to go along with this thing I would have to answer those questions accordingly.

Q. Were you asked: "Now, did Adolph Stack come up with you and Stack to The Bronx?" and did you make the answer: "No, he didn't?" A. I 1833 believe so if it is written down there.

Q. Did Mr. Ryan tell you that you were free to make any correction you wished in this statement? A. He did.

Q. And did you make any corrections? A. I did, at his suggestion.

Q. Did Mr. Ryan suggest them? A. He did.

Q. And point them out? A. Particularly that question, so he said: "This is wrong." He says:

"Adolph Stack here." He says: "That isn't Adolph Stack. We are talking about Adolph Clark. Let's put Adolph Clark down there." So he put Clark down there and I put Clark down and he said: "Sign your initials."

Q. What was the next correction or alteration you made? A. I believe it was pertaining to some girls.

Q. Did Mr. Ryan tell you to put that in? A. He said: "You said"——

Q. Did Mr. Ryan tell you to put that in in the statement? A. He did.

1835 Q. Good. A. Shall I tell you how he went about it?

Q. We will come to it in a moment. I just want to show you page two of People's Exhibit 27 and ask you whether on the next to the last question to the bottom the word "Clark" is in your handwriting. A. It is.

Q. And are those your initials? A. Yes, sir.

Q. And the question when corrected would read: "Now, did Adolph Clark come up with you and Stack to The Bronx?" Answer: "No, he didn't." Did Mr. Ryan then say to you: "What happened to Adolph Stack?" Apparently it is the same error again and uncorrected. Do you agree with that? A. Yes, I see it.

1836 Q. It should be Clark? A. That's right.

Q. We are agreed on that. Answer: "Nothing; he just didn't come; that's all." Did you make that answer? A. That's correct.

Q. Question: "He stayed down in New York?" Answer: "Yes, he did." A. That's right.

Q. Question: "And when you met Stack did he have any gun with him?" Answer: "Yes, he did." Did you make that answer? A. If it is down there I made it.

Q. Do you recall having made it? A. No, I don't.

Q. Do you recall this question being asked of you and you making this answer: Question: "What kind of a gun did he have?" Answer: "Forty-five automatic." Do you remember that? A. I do.

Q. Did you make that answer? A. I did.

Q. Were you then asked: "And is this the gun that he had with him?" and answer: "It looks like the gun?" A. Yes, I did.

Q. Were you asked: "And how do you know he had this gun with him when you met him in Harlem?" Answer: "He told me he had it." A. That is correct. 1838

Q. Question: "Did he show you the gun?" Answer: "No." Did you make that answer? A. That's correct.

Q. Did Mr. Ryan suggest that answer to you? A. No, he didn't.

Q. That was your own? A. That is correct.

Q. That he told you he had it and he didn't show it to you, is that correct? A. That's correct.

Q. Nobody suggested those answers to you, did they? A. No.

Q. That was the truth, wasn't it? A. What was the truth? 1839

Q. That he told you he had the gun on him, but didn't show it to you? A. No, that wasn't the truth.

Q. Was that just your own answer to comply with— A. If you are referring to the answer, yes.

Q. You made the answer? A. I made the answer.

Q. You made it yourself? A. Yes.

Q. Mr. Ryan didn't tell you whether you were to say he showed you the gun or told you about it, did he? A. Mr. Ryan didn't tell me anything of that nature.

Q. Mr. Ryan what; pardon me? A. Mr. Ryan didn't tell me anything of that nature.

Q. When he asked you the question was it your own idea to say: "He told me he had it?" A. Yes, it was.

Q. And had Mr. Ryan asked you before the Stenographer came in: "Did Moore have a gun
1841 when you came to The Bronx?" A. He asked me that.

Q. Did he tell you whether Moore had a gun or not? A. He told me. That is the first thing he told me when I came in.

Q. That Moore had a gun? A. He told me we went up there together and Moore had a gun and Moore did the shooting.

Q. He told you Moore had a gun? A. That's right.

Q. Then did Mr. Ryan tell you that you knew Moore had a gun; did he tell you that? A. No, he didn't. He asked me if I knew.

Q. And what did you say? A. I told him I didn't know anything about it.

1842 Q. And did Mr. Ryan tell you that you did know? A. Yes, he told me I knew. He told me to stop lying.

Q. Did he tell you how you knew, whether Moore had shown it to you or whether you had asked him? A. No, he didn't say. I don't recall everything that was said that night, I mean. I don't recall everything.

Q. Mr. Ryan did say you knew Moore had a gun? A. That's right.

Q. And then he got the Stenographer and this sequence of questions and answers followed. A. That's correct.

Q. And those two answers are your own, he told you he had it? A. Yes, sir.

Q. And he didn't show it to you? A. That's right.

Q. That was your own voluntary statement as to how you knew he had the gun, isn't that so? A. I don't follow you.

Q. That was your voluntary explanation of how you knew Moore had a gun that night, isn't that correct? A. I didn't know that he had a gun, but as far as the questioning was concerned. 1844

Q. Did Mr. Ryan ask you: "Why did you and Stack come up to The Bronx?" and did you answer: "To try and make some money?" A. Yes.

Q. And did he then ask you: "How would you and Stack make some money?" and did you answer: "Stick-ups?" A. Yes, I did. I believe so.

Q. And was it on this page that you made another correction? A. I believe it was that particular answer; that's correct.

Q. Do you find some words inserted in pen and ink? A. That's right.

Q. Are they in your handwriting? A. They are. 1845

Q. And have you initialed them? A. I have.

Q. Did Mr. Ryan suggest to you that you make this addition? A. He did. He laughed. He says, he said: "That sounds kind of bad. Didn't you come to see some girls too? Oh, yes, you came to see some girls too. Don't forget. Look; put that in there."

Q. At this time Mr. Ryan was— A. He told me, he says: "You can put that in there if you want to."

Q. Mr. Ryan was getting a statement from you about your participation in the killing of— A. That was after the statement was written and the papers were coming up. I didn't make any corrections on that paper until after the statement was taken.

Q. Haughton, you couldn't very well make them until you had the typewritten copy. A. That's right; everything was over.

1847 Q. Mr. Ryan was having you sign page by page, wasn't he? A. That's correct.

Q. A statement that involved you in the killing of a police officer? A. That's correct.

Q. And the reason you gave for coming to The Bronx was to make money out of stick-ups? A. That's correct.

Q. And Mr. Ryan suggested to you that you say: "And we also came up to see some girls?" A. That's correct and I asked him on that particular point, I asked him, I said: "You want my initials on there is that what you want?" and he said: "Well I have to do my job." That is what he told me.

Q. While admitting that you came to The
1848 Bronx at least admitting it in this confession, to do stick-ups, Mr. Ryan suggested, you said, that you say you also came to see some girls?

Mr. McDonough: I object to that, if your Honor pleases, as already answered.

The Court: It is already answered. Sustained.

Q. Did he ask you: "And when you left downtown did you have any particular place in mind that you were going to stick up?" and did you answer: "We had this place and if the store was crowded we would stick up some other place?" A. I did.

Q. And did Mr. Ryan suggest that one to you? A. He told me that.

Q. He told you if this place was crowded you would stick up some other place? A. When I first came in there he told me. He said: "Isn't it true that when you all went up there, if one store was crowded you were going to stick up another one?" That was during the course of the questioning and answers when I first came in. 1850

Q. Thank you. A. My denying it.

Q. Question: "What store was that?" Answer: "Ray's liquor store." Were you asked that question? A. I was.

Q. Question: "Where is that?" Answer: "On Webster Avenue." Is that right? A. That's right.

Q. Question: "Near what street?" Answer: "I don't know." A. That's correct.

Q. Didn't Mr. Ryan tell you where the store was, near what street? A. No.

Q. Didn't he given you any information that you could put in this confession? A. He told me, Mr. Ryan told me, he says: "You came down;" he says: "You got off the train on 170th Street or somewhere around there, didn't you?" He said: "You came down some street and walked down some steps?" He asked me all that there and he said: "You walked until you saw the store, didn't you?" I said: "I don't know The Bronx very good. I don't know." 1851

Q. You didn't even know the store on Webster Avenue, did you? A. I didn't know what particular store he was talking about.

Q. You saw a picture of it, didn't you, before the statement was taken? A. I did.

Q. Did you know what store he was talking about then? A. Well, a haze, I had a hazy recollection. I tried to figure out whether that was the particular store me and Adolph had saw or not; in other words, I only saw the store once before.

Q. Once before? A. That was when I was in the company of Adolph.

1853 Q. That was once before the 13th of December? A. Once before when I was in the company of Adolph Clark prior to the time when he seen the pictures; in other words, I didn't know.

Q. Mr. Ryan told you the store was on Webster Avenue, didn't he? A. He did.

Q. But he didn't tell you the address, did he? A. I don't know whether he did or not.

Q. Did he tell you what street it was near?

Mr. Fleischman: Your Honor pleases, the witness has already answered the question.

The Court: Overruled.

Mr. Fleischman: Exception.

1854 Q. Did he tell you what street it was near? A. No, he didn't.

Q. He left you to put in your confession the answer: "I don't know?" A. That's correct.

Q. Did he ask you the question: "Did you know that store before you came up to The Bronx on December 13th, 1946?"—and did you answer: "I had seen it before, but I was never inside of it?" A. I did.

Q. Did he then ask you: "How did you and Stack come up from downtown to The Bronx?" Answer: "In the subway?" A. That's correct.

Q. Question: "Where did you get off the subway?" Answer: "170th Street." A. That's correct.

Q. Question: "170th Street?" Answer: "Yes." A. That's correct.

Q. "And Jerome Avenue?" Answer: "Where the Eighth Avenue subway stops." A. That is correct.

Q. You know that Mr. Ryan had talked with Stack with a Stenographer present twice before you came in, don't you? A. No, I didn't. 1856

Q. You didn't know it then, but you have heard it here, haven't you? A. I have heard it.

Q. You have heard Stack say he made two separate confessions on that night, haven't you? A. I have heard it, sir.

Q. When you were asked what subway you came up on, Mr. Ryan told you which one, didn't he? A. Mr. Ryan told me, he says: "You must have came up on the Eighth Avenue Subway, didn't you?"

Q. It was Mr. Ryan who told you, wasn't it? A. Yes, he did.

Q. You didn't remember it yourself? A. I didn't know anything about it. 1857

Q. That's right; Mr. Ryan told you? A. That's correct.

Q. And he told you you got off at 170th Street, didn't he? A. That's correct.

Q. And he said: "And Jerome Avenue," didn't he? A. Jerome Avenue? I don't know whether he said Jerome Avenue or not.

Q. And didn't you correct him and say: "Where the Eighth Avenue subway stops?" A. He asked me and I told him I didn't know.

Q. Did you make the answer: "Where the Eighth Avenue subway stops?" A. If it is down there I made it.

Q. Mr. Ryan didn't suggest that to you, did he? A. No.

Q. His question was: "At Jerome Avenue?" You say: "Where the Eighth Avenue subway stops." A. That's correct.

Q. You put that in yourself, didn't you? A. I
1859 was going along with him.

Q. You were going along with him. Did you ever hear him tell Moore to say where he got off in the statements that were taken and read here? A. I didn't. In the statements that were read?

Q. You heard Moore say that he said what he was told? A. I didn't either; I didn't hear it.

Q. But he gave you 170th Street and Jerome Avenue and you modified it by where the Eighth Avenue subway stops; did he? A. May I?

Q. Yes. A. You see, at that time he had showed me a picture. He was showing me pictures.

Q. Of what? A. Of the liquor store.

Q. Yes. Where is it? A. I don't know between what streets it is still. I still don't know.

1860 Q. Is it near the subway you got off? A. I got off the Eighth Avenue subway.

Q. Yes. A. So he says.

Q. I understand it is what he says. A. I got off the Eighth Avenue subway and came down.

Q. Is it near this store? A. Is it near what store?

Q. The liquor store. A. I don't know.

Q. Well, did the picture of the liquor store remind you of how you had come?

Mr. Fleischman: If your Honor pleases, I object to this. The witness is testifying that he didn't come up.

Mr. Foley: Oh, if your Honor pleases, I object to Counsel making a speech.

Mr. Fleischman: Mr. Foley is trying to draw inferences. The witness isn't testifying the manner in which he is framing his questions.

The Court: Sustained. How long do you expect to be? Do you want to finish? It is after one o'clock now. Will you be another half hour with that? 1862

Mr. Foley: I think so.

The Court: You are admonished by the Court not to discuss the case. Form no opinion until the matter is submitted to you by me. Wait for the attendants, please. (The Jury retires from the courtroom.)

The Court: Defendants remanded. (The defendants leave the courtroom.)

The Court: Come up, Mr. Stenographer.

(Messrs. Wilkinson, McDonough, Fleischman, Ehrman and Delagi confer with the Court.) 1863

The Court: After we had a conference this morning on this case I was surprised at the attitude taken in court. Now, Mr. Wilkinson, you may state for the record what you intended to prove by that man Starnes.

Mr. Wilkinson: In behalf of the defendant George Moore, the defense had called one John Starnes as a witness for the defense; the defense intending——

The Court: My understanding is you wanted to show through this witness that there were hittings of this witness and to show course of conduct insofar as certain officers in the case were concerned.

Mr. Ehrman: That's right.

Mr. Wilkinson: That the evidence was material to the question.

The Court: To the issues in this case.

Mr. Wilkinson: To the issues in this case.

The Court: Same ruling at this time.

Mr. Wilkinson: Exception.

1865

(After Luncheon Recess)

Lester Haughton resumes the stand and further testifies on cross-examination as follows:

By Mr. Foley.

Q. Haughton, do you remember being asked this question by Mr. Ryan: "Q. How did you go there after you got off the subway?" and did you make the answer: "A. We walked east?" A. Yes, sir.

1866 Q. Did Mr. Ryan dictate that answer to you? A. Yes, sir.

Q. "Q. To where? A. Over to where we hit Webster Avenue." Did you make that answer? A. I did.

Q. Was it your own? A. Yes, sir.

Q. It wasn't dictated by Mr. Ryan, was it? A. It was.

Q. Was it your own answer? A. I made the answer.

Q. Was it dictated to you by Mr. Ryan? A. It was, sir.

Q. "A. Over to where we hit Webster Avenue?" A. Yes, sir.

Q. Were you then asked this question: "Q. And then?" "A. Down the same street you come out from the subway." Did you make that answer? A. I did, sir.

Q. And was that dictated to you? A. It was, sir.

Q. And then the question "Yes? A. We walked down that way and we came to a lot of steps, like, and we walked down there." Did you make that answer? A. I did, sir. 1868

Q. Did Mr. Ryan suggest that answer to you? A. He did, sir.

Q. Did he then ask you, "Q. The steps led you down to Webster Avenue?" and did you make the answer: "A. Down to Webster Avenue." A. I did, sir.

Q. Was that suggested to you? A. It was, sir.

Q. It wasn't your own idea that you came down steps to Webster Avenue, was it? A. No, sir.

Q. "Q. Then what did you do? A. We walked until we saw the store." Did you make that answer? A. I did, sir.

Q. "Q. Did you lead the way? A. Yes, I knew where the store was." Did you make that answer? 1869 A. I did, sir.

Q. Was that dictated to you? A. It was, sir.

Q. "Q. When you reached the store, did you and Stack have any agreement or plan as to what you would do in the store? A. No." Did you make that answer? A. I did, sir.

Q. And did Ryan dictate the answer "No" to you? A. No, sir.

Q. Is it your own idea? A. Read the question, please?

Mr. Foley: Certainly. "Q. When you reached the store, did you and Stack have any agreement or plan as to what you would do in the store? A. No."

Q. Did Mr. Ryan dictate that answer to you? A. No, sir.

Q. Is that your own idea? A. Yes, sir.

Q. And did you feel free to say "No" if you wanted to? A. No, sir. I mean he asked me the
1871 question and I answered.

Q. Did he tell you what the answer would be? A. No, sir.

Q. Did he tell you what he wanted you to answer? A. He asked me the questions.

Q. Did he tell you what answer he wanted you to make? A. No, sir, he didn't.

Q. Did he leave that to you? A. He did.

Q. And you said "No?" A. That's correct.

Q. You had no plan as to what you or Stack would do in the store, is that correct? A. That's the answer I made.

Q. Was it the truth? A. The answer I made?

Q. Yes. A. No, sir.

1872 Q. Well, the answer you made was "No." Did you have a plan? A. I don't follow you, sir.

Q. Did you have a plan as to what you and Stack would do when you got in the store? A. Me and Stack didn't go to any store.

Q. I didn't ask you that. I said, "Did you have a plan? A. I didn't go to any store, sir, so I can't answer that question.

Q. "Q. Did you talk over what each one was to do? A. No, we didn't." Did you make that answer? A. I did.

Q. Did Mr. Ryan dictate that to you? A. Not that I can recall.

Q. That's your own answer? A. That's right.

Q. "Q. What happened after you reached the store? A. We went in." Did you make that answer? A. I did.

Q. And was that dictated to you? A. Those questions were suggested. I mean the answers were suggested to me.

Q. Were they suggested to you before he began 1874
to take the statement, or while he was asking the questions? A. Before he took the statement.

Q. And once he started asking questions and answers, he no longer made suggestions to you. When he started asking questions, rather; not questions and answers. Let me put that to you again. (Question withdrawn.)

Q. When Mr. Ryan started asking questions of you, he had finished making his suggestions, is that correct? A. That's correct.

Q. And from the time he started asking you questions you made all the answers as far as you could in accord with his suggestions? A. That's correct.

Q. Did Mr. Ryan ever suggest to you this an- 1875
swer: "Q. When you reached the store, did you and Stack have any agreement or plan as to what you would do in the store? A. No." Did he suggest that answer to you? A. No, he didn't.

Q. When he came to the question "What happened after you reached the store," you made the answer, "We went in." Is that correct? A. If

that's the answer down there; if it is down there I made it.

Q. Did he then show you a picture and ask you this question: "Q. And I show you this picture which has been marked Exhibit 1, which has on the back, 'George Moore, February 7, 1947,' and the words, 'I entered this liquor store on December 13, 1946, at 6:15 or 6:30 o'clock,' and I ask you if that is a picture of the outside of the store that you went in?" and did you answer: "A. Yes; that's it." A. Yes, I did.

Q. And did Mr. Ryan ask you to mark something on there?

1877

The Court: Showing the witness——

Mr. Foley: Showing People's Exhibit 7.

The Court: What is the answer?

A. He did.

Q. And did you mark anything on there?

Mr. Foley: Don't look at it, please.

Q. (continuing) Do you recall having marked anything on there? A. I recall writing something on one picture.

Q. Did you write on more than one? A. That's all.

1878

Q. Then it would be this one, if at all, wouldn't it? A. If anything is written on there.

Q. Do you remember what you wrote on it? A. No, I don't.

Q. Do you recall the question, "Q. Will you write your name on the back of that picture where George has written?" A. Yes, I do.

Q. And did Mr. Ryan say to you, "If you want to you make write anything you want on there?" A. I believe so.

Q. And did you then write something on this picture, People's Exhibit 7? A. I believe I did.

Q. Did you write anything you wanted to on there? A. He asked me if that was the store that I entered.

Q. Did he say to you, "Will you write your name on the back of this picture where George has written?" A. That's right.

Q. And did he say to you, "If you want to you can write anything you want on there?" A. 1880
That's right.

Q. Did you write anything you wanted to on there? A. No, I didn't.

The Court: Keep your voice up.

Q. I ask you to look at the back of People's Exhibit 7 and tell me what you find on there in your handwriting? A. "This is the store."

Q. The words, "This is the store?" A. That's correct.

Q. And your name? A. Lester Haughton.

Q. Did Mr. Ryan tell you to write that on there? A. I was following his suggestion.

Q. You were following his suggestion? A. 1881
That's right.

Q. And did he before he called the stenographer in, at the time he was making suggestions, tell you that he would ask you to write on the picture? A. No, he didn't.

Q. Did he suggest to you, before the stenographer came in, that he wanted you to put on that picture, People's Exhibit 7 now, "this is the store?" A. No, he didn't.

Q. At the time he spoke to you, during your examination, when you did write on the picture, isn't it a fact he said you could write anything you wanted on there? A. Yes, I believe so.

Q. And what you did write on there in your own handwriting is "This is the store." Isn't that correct? A. That's correct.

Q. And you signed your name— A. Lester Haughton.

Q. Lester Haughton? A. That's right.

Q. Did Mr. Ryan then say to you, "Now, I see you wrote your name Lester Haughton. Is that your name?" and did you answer, "Yes, that is
1883 my name." A. I did.

Q. Isn't that the first time that Mr. Ryan ever heard that your name was Lester Haughton? A. No, sir.

Q. Weren't you known to Mr. Ryan as Raymond? A. In the beginning of my statement he asked me my name.

Mr. Foley: That's correct, and you did say Lester Haughton.

Q. "Q. And your correct name is Lester? A. Yes."

"Q. After you got to Ray's liquor store on
1884 Webster Avenue on December 13, 1946, did you and Stack go in there? A. Yes, we did." Did you make that answer? A. I did.

Q. And was that as a result of suggestions made to you before the stenographer ever entered the room? A. It was.

Q. Not because of anything that was said to you in the progress of the question and answer? A. I mean, I was intimidated, so to speak.

The Court: Keep your voice up, please.

Q. You were intimidated, so to speak? A. I was.

Q. And of all the suggestions that were made to you, were any of the suggestions made to you while the questions were being asked and while you were answering them? A. No.

Q. "Q. Who went in first? A. I don't know who went in first." Did you make that answer? A. Yes, I believe I did.

Q. Did Mr. Ryan ever suggest to you at any time who went in first, you or Stack? A. No, I don't believe so.

Q. "Q. But you both went in? A. Yes." Did 1886
you make that answer to that question? A. I did.

Q. "Q. Tell me what happened after you and Stack went in the store? A. We went in the store and said, 'This is a stick-up.'" Do you remember making that answer? A. I do.

Q. Were you then asked, "Who said that?" and making the answer, "Stack said it?" A. I was.

Q. Did Mr. Ryan ever tell you whether it was Stack or you that said, "This is a stick-up?" A. I believe he did. I am not certain.

Q. Do you think you might have made that answer of your own independent recollection free from suggestion? A. My recollection of what?

Q. The stick-up? A. I wasn't there. I don't 1887
know nothing about this.'

Q. But you are not sure that Mr. Ryan suggested that Stack said, "This is a stick-up?" A. I am not sure.

Q. "Q. Who did he say that to? A. The storekeeper." Did you make that answer? A. If it is down there I made it.

Q. Well, do you recall making it? A. A lot of that I don't recall.

Q. "Q. Where was he? A. Behind the counter, the front of the counter, somewhere; I don't know." Did you make that answer? A. Yes, sir.

Q. Was that answer, too, the result of suggestion by Mr. Ryan? A. No.

Q. Was that your own answer? A. I mean, I didn't know anything about it.

Q. Was it Mr. Ryan's suggestion? A. I was going along with him.

Q. Was it Mr. Ryan's suggestion? A. No, it wasn't.

1889 Q. Did anybody else suggest it to you? A. I mean——

Q. Did nobody else suggest it to you? A. No; didn't nobody suggest it to me.

Q. "Q. After he said that, what happened? A. The detective in the back pulled out his pistol." Did you make that answer? A. I did.

Q. "Q. Where did the detective come from? A. Back of the store behind the cases." Did you make that answer? A. I did.

Q. "Q. Did you know the detective? A. No, I didn't." Did you make that answer? A. I did.

Q. Did you know he was a detective? A. No, I didn't." Did you make that answer? A. I did.

1890 Q. "Q. Was he a small man or a big man? A. He looked to be a large man." Did you make that answer? A. I did.

Q. And were all these answers that I have just read to you, the last half dozen, made by you as a result of suggestions Ryan made earlier in the evening? A. They were.

Q. "Q. And what happened after the detective stepped from behind the cases? A. I don't

know. I just ducked behind the counter. I saw a pistol and I ducked behind the counter." Did you make that answer? A. I did.

Q. "Q. Did Stack have a gun in his hand when you went into the store? A. Yes, he did." Did you make that answer? A. I did.

Q. "Q. What happened when you ducked behind the counter? A. I just heard some shots. I didn't see what happened." Did you make that answer? A. I did.

Q. "Q. How many shots did you hear? A. A bunch of them; I didn't count them." Did you make that answer? A. I did.

1892

Q. "Q. And then what happened? A. Then we was outside again." Did you make that answer? A. I did.

Q. "Q. You went outside of the store? A. Yes." Did you make that answer? A. I did.

Q. "Q. What happened to Stack? A. He was outside, too; both of us was outside." Did you make that answer? A. I did.

Q. Did Ryan suggest it to you? A. He suggested all of them.

Q. "Q. Did you get hit with any of the bullets? A. I had a cut; maybe it was a bullet or a piece of glass." Did you make that answer? A. I did.

Q. And did Ryan suggest that answer, too? A. He did.

1893

Q. Just as he did all of the others? A. Yes, sir.

Q. "Q. Where on your eye was the cut? A. Right here." Did you make that answer to Mr. Ryan? A. I did.

Q. "Q. (By Mr. Ryan: Indicating his right eyebrow; no; witness corrects me. It is below the right eyebrow and on the very upper part of

the eyelid) Were you bleeding there from your right eye? A. Yes; a little." Did he ask you that question? A. He did.

Q. And did you make that answer? A. I did.

Q. Did you show Mr. Ryan where you had a cut? A. No, I didn't. I showed him a mark I had on my eye.

Q. And when Mr. Ryan said it was on your eyebrow, did you correct him and say, "No; on the very upper part of the lid below the eyebrow?" A. I don't recall doing anything of that nature.

1895 Q. Did you tell Mr. Ryan that it might have been from a piece of glass? A. No, I don't recall telling him that.

Q. "Q. Well, how did you get cut there? A. I don't know; just found out it was cut." Did you make that answer? A. I did.

Q. "Q. You mentioned it might have been a piece of glass? A. Could have been." Did you make that answer? A. I did.

Q. "Q. How could that happen? A. The glass was flying." Did you make that answer? A. I did.

Q. "Q. Where did the glass fly from? A. Off the counter." Did you make that answer? A. I did.

1896 Q. "Q. From bottles that were broken by bullets? A. Yes." Did you make that answer? A. I did.

Q. The glass that might have cut your eye could have come from broken bottles, is that correct?

Mr. McDonough: I object to the question, if Your Honor pleases. It is a summation and it is not a question.

The Court: I will sustain the objection. You may ask him the direct question.

Q. Did you tell Mr. Ryan you might have been cut by a piece of glass? A. Did I tell him that?

Q. Yes. A. He told me that.

Q. Mr. Ryan told you that? A. Yes.

Q. That was before ever they started taking this statement, People's Exhibit 27? A. That's correct.

Q. That was before ever the stenographer came in? A. That's correct.

Q. Then Mr. Ryan asked you questions about how did you get cut; you mentioned it might have been a piece of glass; how would that happen; where could it come from? and you answered all those questions? A. That's correct. 1898

Q. And the answers that you gave to him were based upon suggestions he had made to you some time before? A. That's correct.

Q. And that was the only information that you ever had which you could supply any answer to those questions? A. That's correct.

Q. "Q. Then what happened when you got out of the store? A. We went over; we ran around the corner somewhere." Did you answer that? A. I did.

Q. Did Ryan give you that answer or suggest it? A. All those answers were suggested. 1899

Q. That one? A. All of those were.

Q. That one? A. Yes.

Q. "Q. Were you leading the way? A. No; I was just running. I don't know much about it up there. I don't know much about the Bronx. I was trying to get away; that's all." Did you make that answer? A. I believe I did.

Q. And did Mr. Ryan suggest that to you? A. Yes, sir.

Q. "Q. Where did you run to? A. Around some corner; I don't know the street; I don't know where it was." Did you make that answer? A. I did.

Q. And did Ryan suggest that you answer that question that way? A. He didn't suggest that I answer them that way, but he made the suggestion.

Q. Before you started? A. He did.

Q. And he gave you no information as to where you had run when you went out of the store, did
1901 he? A. He told me that I ran in the school-yard, or something like that.

Q. Did he tell you how you ran when you went out? A. Did he tell me how I ran?

Q. Yes; in what direction did you run? A. He told me I ran across the street and ran around the block over some bridge; ran in the school-yard, or something like that. I don't recall.

Q. When you say you were told you ran around the block, you mean you ran around the corner, don't you, or he told you you ran around the block. Which is it? A. I don't recall. He told me I ran around some block and over a bridge and in a school-yard, some place like that.

1902 Q. "Q. Then where did you go? A. Went over a bridge. I remember that." Did you make that answer? A. I did.

Q. "Q. A foot bridge? A. One of those where the train runs underneath it." Did you make that answer? A. I did.

Q. "Q. Over the New York Central tracks on Park Avenue? A. I believe so; yes." Did you make that answer? A. I did.

Q. "Q. When you went over the bridge, did you catch up with Stack? A. Yes." Did you make that answer? A. I did.

Q. "Q. Did Stack catch up with you? A. We were running mostly together all the way." Did you make that answer? A. I did.

Q. And was that as a result of suggestions from Ryan? A. It was.

Q. "Q. Did Stack say anything to you? A. If he did I didn't hear him." Did you make that answer? A. I did.

Q. And did Ryan suggest that answer to you? A. No.

1904

Q. Is it your own answer? A. It is.

Q. If Stack said anything you didn't hear him, is that correct? A. That's correct.

Q. "Q. After you crossed the bridge over the New York Central Railroad tracks, where did you go? A. Where did I go?"

"Q. Yes. A. I went downtown."

Were those questions asked of you and did you make those answers? A. I did.

Q. "Q. Did you go to a school-yard before you went downtown? A. Yes. We stopped in some school-yard."

"Q. Did you get the gun from Stack at any time while you were running away from the store? A. Yes, I did."

1905

Did you make that answer? A. I did.

Q. And had Mr. Ryan suggest that to you before he called in the stenographer? A. He did.

Q. That you got the gun from Stack? A. He did.

Q. While you were in flight from the store? A. That's what he told me.

1906

Q. Where did he tell you you got it? A. He didn't tell me. He told me I got the gun.

Q. He just told you you got it? A. That's right.

Q. He never told you where? A. I don't recall. If he did I don't remember it.

Mr. Foley: I didn't hear the last, please.

The Witness: I said if he did, I don't remember it.

Q. "Q. Where was that that he handed you the gun? A. I don't know; maybe that was in
1907 the school-yard." Did you make that answer? A. I did.

Q. And at that time was it your recollection of what he suggested to you before your examination began? A. It was.

Q. You heard George Moore testify here, didn't you? A. I did.

Q. You heard him testify that Ryan suggested all the answers to the questions that were asked of Moore? A. I did.

Q. And that the answers he made were based on Ryan's suggestions? A. I did.

Q. Made at his dictation? A. I did.

Q. You know that Moore had finished his state-
1908 ments before you came in, don't you? A. No, I didn't.

Q. Did you hear it testified to that his last one was at 11:45 P. M.? A. I did.

Q. And yours began at three o'clock the next morning? A. I did.

Q. When Moore was on the stand, did you hear him asked, where was it that you gave Ray the

gun, and did you hear him answer, "On the bridge?" A. If it is in there.

Q. And you heard it testified to that those were answers that we suggested by Mr. Ryan? A. That's correct.

Q. And the answers that you are making now were suggested by Mr. Ryan? A. That is correct.

Q. And the answer that was suggested to you was you got it in the school-yard, is that right?

Mr. Fleischman: If Your Honor pleases, the witness testifies that that was his recollection; he didn't remember. I object to the form of the question. 1910

The Court: Sustained on that particular point.

Q. The answer that you put down or the answer that you gave to the stenographer was your recollection at that time of what Mr. Ryan had suggested to you, wasn't it? A. It was.

Q. And didn't you say in this statement that you got it in the school-yard? A. I did.

Q. And that was your recollection on February 8th of what Mr. Ryan had told you shortly before the statement was taken?

1911

Mr. Fleischman: If Your Honor pleases, I object to that. The witness has already answered, and Mr. Foley has been repetitious.

The Court: Overruled.

Mr. Fleischman: Exception.

Q. Is that correct? A. It is.

Mr. Foley: I want to go ahead now, Haughton, to questions that were asked you about when you got downtown.

Q. Do you remember the question being asked of you about taking the gun downtown, "Where did you have the gun? "A. In my pocket." A. Yes.

Q. "Q. Which pocket? A. Either one of them; the right or left." Do you remember that? A. I do.

Q. "Q. Did you have an overcoat on? A. Yes." A. Yes.

1913 Q. "Q. Did you have it in your overcoat pocket? A. Yes." Did you make that answer? A. I did.

Q. "Q. Where did you meet Stack, the subway? A. 135th Street." Now, that question; did you make a correction in it in your own handwriting? A. I did.

Q. Did you put the words "got off" in there? A. I did.

Q. And initial them? A. I did.

Q. And you crossed out the words, "meet Stack?" A. That's right.

Q. So that the question as corrected by you reads, "Where did you get off the subway? A.

1914 135th Street." A. That is correct.

Q. Did you make that correction yourself or by direction? A. By direction.

Q. By direction of Mr. Ryan? A. That's right.

Q. "Q. Then what did you do? A. Nothing. I just waited around until I saw Adolph.

Mr. McDonough: I object, if Your Honor pleases.

The Court: After the answer "135th Street," what is the next question?

Mr. Foley: "Then what did you do?" Oh, I see. I am sorry.

Q. "Q. Then what did you do? A. Then what did I do?"

"Q. Then what did you do? A. Nothing. I just waited around until I saw Adolph."

Do you remember those questions and answers? A. I do.

Q. Did you make that answer? A. I did.

Q. "Q. Adolph Clark? A. Adolph Clark. I gave him the automatic." Did you make that answer? A. I did. 1916

Q. "Q. When did you meet Adolph Clark, about? A. I don't know. A couple of hours later; ten or eleven; something around there." Did you make that answer? A. I did.

Q. "Q. Did you say anything to Adolph when you gave him the pistol? A. Did I say anything to him?"

"Q. Yes. A. I told him to hold it."

Did you make that answer? A. I did.

Q. Was that your own answer or was that one suggested to you by Mr. Ryan? A. Suggested by Mr. Ryan.

Q. "Q. Say anything else to him? A. Told him that things got messed up and there was some shooting, and here is the pistol." Did you make that answer to that question? A. I did. 1917

Q. "Q. And when did you see Stack again after that? A. I saw him the next day?" Did you make that answer? A. I did.

Q. "Q. And where did you see him? A. At his home." Did you make that answer? A. I did.

Q. "Q. Did he have anything the matter with him then? A. Yes, sir; he had an arm wound." Did you make that answer? A. I did.

Q. While you were being asked these questions and making these answers, wasn't George Moore, Stack, still sitting right beside you? A. He was.

Q. "Q. Did you see where he had been shot in the arm? A. Yes, I saw it." Did you make that answer? A. I did.

Q. "Q. Did you discuss with Stack that time about changing your clothes and destroying the clothes? A. Yes, he did." Did you make that answer? A. I did.

Q. "Q. What was that talk? A. He told me to take them off." Did you make that answer? A. I did.

Q. "Q. He tell you why you should take off your clothes? A. He told me to take them off because maybe somebody saw us." Did you make that answer? A. Yes.

Q. Do you recall, Haughton, whether, when you had finished that statement and the stenographer left the room, I came over and spoke to you and Stack where you were seated together? A. I don't recall, sir.

Q. Do you recall my saying to you that you should hold nothing against Stack, because he had done his best to cover you up all through his own statements? A. I don't recall that, sir.

Q. Were you fed while you were in Mr. Ryan's office? A. I had some cup cakes and tea.

Q. Did you have smokes? A. I had my own smokes.

Q. Did you talk with various people who came into the room on different occasions? A. Various peoples.

Q. Yes, people who came in there? A. I only talked to one person, Mr. Ryan.

Q. Didn't you speak to me? A. Oh, I spoke to you, yes.

Q. Didn't you speak to the commissioner; didn't he ask you some questions? A. No, sir.

Q. You are sure? A. I am sure of that.

Q. Did you speak to any of the detectives who were there? A. Not that I can recall, sir.

Q. Well, your recollection is that the only people you spoke to were Ryan and myself? A. That's right.

Q. And you said one other, I think? A. I don't recall. 1922

Q. Just the two of us? A. Yes.

The Court: Don't shake your head, and please keep your voice up.

The Witness: Yes.

Q. Did anybody else speak to you while you were in that room, other than Moore? A. I don't recall, sir.

Q. Well, your best recollection is, then, Haughton, that Moore spoke to you after you got to Mr. Ryan's room, that Mr. Ryan did and that I did, is that correct? A. That's correct. You spoke to me after we were getting ready to leave, 1923 I believe.

Q. Do you recall my speaking to you when you completed your statement and the stenographer left? A. You said something to me after the detective hit Moore out in the hall.

Mr. Foley: Just a minute.

Q. Did a detective hit Moore while you were there? A. Yes, sir.

Q. Well, you didn't come in until around, what time, two o'clock? A. Yes, sir. After the statements and everything were over and Moore went to the bathroom, and I think Detective Farrell hit him, tripped him.

Q. Were you with him? A. No, I wasn't with him.

Q. Where did it take place? A. In the hallway. You came over and spoke to me and told me, and said there was going to be nothing like that.

1925 Q. Were you out in the hall with him? A. Did I go to the hall with him?

Q. Yes. A. No.

Q. Did you see this thing happen? A. No, but you went out there and talked to some other man and told him to send that man downtown.

Q. You say this was after your statement was taken? A. After all the statements were taken.

Q. Your statement was started about three o'clock in the morning, wasn't it? A. That's correct.

Q. Didn't you hear Moore testify on the stand here that no one ever struck him after he started his first statement at 8:45 in the evening, except once he was kicked by Mr. Ryan? A. I didn't

1926 hear that, sir.

Q. You were sitting there, weren't you? A. I didn't hear him so that he had been hit after that.

Q. You were speaking before of having been convicted of something. Were you convicted in 1942? A. I was, sir.

Q. What was it? A. Robbery.

Q. Robbery? A. Yes, sir.

Q. Did you have another one for a gun, an 1897? A. Yes, sir.

Q. Did you have another one besides that? A. Yes, sir.

Q. What was it? A. Misdemeanor.

Q. What was it? A. Breaking in a gum machine.

Q. Did you have any other? A. Not that I can recall.

Q. I show you a picture here—it is now known as People's Exhibit C for Identification. Do you know whose it is? A. It is my picture.

Q. And the name on the back is Raymond Haughton, is that correct? A. It is, sir. 1928

Q. Were you known as Raymond Haughton in 1942? A. I was, until I got my birth certificate.

Mr. Foley: I would like to have it marked in evidence now.

The Court: You offer it in evidence?

Mr. Foley: Yes, sir.

Mr. Wilkinson: I will object to it on behalf of the defendant Moore; immaterial, irrelevant and incompetent; not binding on the defendant Moore.

Mr. Fleischman: Your Honor, I would like to ask a preliminary question before I determine whether there is any objection. 1929

The Court: As to what?

Mr. Fleischman: Where this picture was taken.

The Court: You may ask him.

Mr. Fleischman: Lester, where was this picture taken?

The Witness: I believe it was down in the Tombs.

Mr. Fleischman: Rogues Gallery?

The Witness: I believe so.

Mr. Fleischman: No objection.

The Court: The picture is received as to the defendant Moore.

Mr. Wilkinson: I respectfully except.

(The picture referred to is received in evidence and marked People's Exhibit 28 of this date.)

Mr. Foley: That's all, Your Honor.

Mr. Wilkinson: No questions by Moore.

Redirect examination by Mr. McDonough.

Q. Now, Lester, at the time you first came to the District Attorney's office, had Mr. Ryan or anyone else told you that Adolph Clark had already been in there? A. Yes.

Q. And did they or anyone else tell you that they had questioned Adolph Clark, and that he had made a statement concerning this matter? A. They did.

Q. Did Mr. Ryan or anyone else tell you that Moore or Stack had been in? A. They did.

Q. And that they had questioned him and that he had made a statement? A. They did.

Q. Before the Stenographer had been called in, you were questioned by Mr. Ryan, is that correct? A. I was.

Q. And he went over many of the questions which you were asked at the time the stenographer was there? A. That's correct.

Q. So that at the time the stenographer was brought in and the questions were asked of you, all of the facts contained in the questions had

previously been asked of you, is that correct? A. That's correct.

Q. Now, before the stenographer had been called down and Mr. Ryan was questioning you, did they show you any pictures of a liquor store? A. They did.

Q. Had they told you before they showed you the picture of the liquor store that Adolph Clark had told them that he was with you to that liquor store?

Mr. Foley: I am going to object, if your Honor please, to the form of the question. It is leading. I would rather have it asked directly. 1934

The Court: Overruled. I will allow it. Answer?

A. Yes, they did.

Q. So, in other words, before the stenographer——

The Court: It is already answered; not in other words.

Q. At the time, then, when the stenographer was present and they showed you this picture and asked you to write something on the back of it, that picture had been previously shown to you? A. It had. 1935

Q. And it was that picture that they said that Adolph Clark had identified as being the store, is that correct? A. That's correct.

Mr. Foley: I object.

The Court: Objection sustained.

Mr. McDonough: That's all.

Recross-examination by Mr. Foley.

Q. Haughton, when you were talking to Mr. Ryan, in that period before the stenographer came in, you were shown a picture, People's Exhibit 7, that you wrote on, weren't you? A. I was shown many pictures.

Q. Many pictures, and when you were being asked the questions by Mr. Ryan, how many pictures were you asked to write on? A. I was asked to write on that particular one.

Q. That's the only one of the many, isn't it? A. That's all he asked me to.

1937

Q. And I think you told your counsel just now that after Mr. Ryan had gone over your questions and answers with you that you had them all in your mind by the time the stenographer came in? A. I didn't say I had them in my mind.

Q. That the answers that you made here were best on information that you got from Mr. Ryan before the stenographer came in? A. That's correct.

Q. And was your recollection of what Mr. Ryan told you sufficiently clear to take you through without stop all of the questions and answers while the stenographer was present? A. Well, a lot of the questions he asked me he asked me in

1938 such a way that I had to answer them one way or another.

Q. Yes or no? A. That's right.

Q. Did Mr. Ryan have to stop any time while the stenographer was there to remind you of what you were supposed to say? A. No, he didn't.

Q. You remembered it all? A. Yes, I did.

Q. And the answers that you gave in this People's Exhibit 27 of thirteen pages were all based

on what you were told before the stenographer came in? A. That's correct.

Q. It was a crime about which you knew nothing personally? A. That is correct.

Q. None of it was your independent recollection? A. Beg your pardon?

Q. None of your answers was based on independent recollection? A. You mean if I knew anything about it?

Q. That's right. A. I didn't.

Q. The only information you had concerning the location of this store you got from Ryan? A. That's correct.

1940

Q. Before the stenographer came? A. That's correct.

Q. The information as to how you came uptown you got from Ryan? A. That's correct.

Q. You didn't know it? A. No, I didn't.

Q. Where you got off the subway you got from Ryan, didn't you? A. That's correct.

Q. How you got from the subway over to go down the steps to Webster Avenue you got from Ryan, is that right? A. That's correct.

Q. When you went into the store and the detective coming from behind the boxes was something that you put in your statement, but you got it from Ryan? A. That's correct.

Q. You didn't know it? A. No, I didn't.

1941

Q. The number of shots that was heard in there, the fact that there was a number, you got that from Ryan, didn't you? A. Yes, sir.

Q. The fact that there were bullets smashing bottles and that glass was flying around, you got that from Ryan, didn't you?

Mr. Fleischman: If Your Honor pleases, I am going to object to this line of examination.

The Court: It is already answered.

Mr. Foley: That's all.

Mr. Wilkinson: No questions, sir.

Mr. McDonough: Nothing further.

(Witness excused.)

Mr. Fleischman: If Your Honor pleases, these two witnesses that I am about to call have been sitting in the court-room with the consent of the District Attorney.

1943 Mr. Foley: That's right, sir.

WILLIAM RIEDLER, 1154 College Avenue, Bronx, New York, called as a witness in behalf of the defendant Haughton, being first duly sworn, testified as follows:

Direct examination by Mr. Fleischman.

Q. Mr. Riedler, how long have you resided in the Borough of the Bronx? A. About twenty years.

Q. And how long have you maintained a place of business in the Bronx? A. About four years.

1944

The Court: Mr. Riedler, talk louder, please.

Q. Where is your place of business at the present time? A. 308 East 167th Street.

Q. And will you please tell the Court and jury, Mr. Riedler, what business you are engaged in? A. Roofing the sheet metal work.

Q. Now, Mr. Riedler, do you know the defendant, Lester Haughton? A. Yes.

Q. Was he employed by you, Mr. Riedler? A. Yes, sir.

Q. On what date was he employed by you? A. He came in to me around the end of May.

The Court: What year?

The Witness: 1946.

Q. And did you engage him in May of 1946? A. Yes, sir.

Q. And did he work for you thereafter? A. Yes, sir. 1946

Q. Until what date did he work for you? A. I think till October.

Q. October of what year? A. 1946.

Q. And did he leave your employ at that time? A. Yes.

Q. Will you tell us the reason why he left your employ at that time?

Mr. Foley: I object, if Your Honor please.

The Court: How is it material?

Mr. Fleischman: Well, I want to show the circumstances; that he didn't leave. I want to show the situation of this man's business at the time. 1947

The Court: Did you discharge him?

Mr. Foley: I will withdraw the objection.

The Court: He may answer.

Q. What was the reason for his leaving? A. The reason, I didn't had much work for him.

Q. You say you didn't have work for him, and that's the reason you let him go? A. Yes.

Q. Will you tell us what his duties were during the period of time he worked for you?

Mr. Foley: Now, I object to that, if Your Honor please.

The Court: Sustained.

Q. During the period of time that he worked for you, did you find him a competent, well-behaved worker?

The Court: Are you making him a character witness?

1949 Mr. Fleischman: This witness had an opportunity to observe this defendant.

The Court: I am asking you, are you making him a character witness?

Mr. Fleischman: Yes, I will do that.

The Court: You haven't laid the proper foundation.

Q. Did you have an opportunity to observe the defendant Lester Haughton while he worked for you, observe his conduct? A. Yes.

Q. Did you have an opportunity to discuss with others his conduct during the period of time that he worked for you? A. Not with others; I don't

1950 know the other friends of his.

Q. Can you from your own observation state his reputation for peacefulness? A. Yes.

The Court: Objection sustained. You must lay a foundation for it, counsellor.

Q. Have you ever heard anything bad about the defendant? A. No.

The Court: He may answer that question.

Mr. Fleischman: He has already answered it.

The Court: What was the answer?

Mr. Fleischman: The answer was "No." Your witness.

Mr. Foley: No questions.

DORA FLETT, 217 East 84th Street, New York, N. Y., called as a witness in behalf of the defendant Haughton, being first duly sworn, testified as follows: 1952

Direct examination by Mr. Fleischman.

Q. Miss Flett, are you a registered nurse in the State of New York? A. Yes, sir.

Q. Duly licensed as such? A. Yes, sir.

Q. How long have you been a registered nurse in the State of New York? A. About eighteen years.

Q. Miss Flett, where are you presently employed? A. The Hospital for Joint Diseases, 1919 Madison Avenue.

Q. In what capacity are you employed there? A. Supervisor of nurses. 1953

Q. You say you are the supervisor of nurses there? A. Yes, sir.

Q. Are there any other employees whose work is supervised besides nurses? A. Yes; everybody in the nursing department. The personnel, including orderlies, special nurses.

Q. Do you know the defendant, Lester Haughton? A. Yes, I do.

Q. Was he employed at the Joint Disease Hospital? A. Yes, he was.

Q. Can you tell us when he was employed? A. December 15, 1946 to February 8, 1947.

Q. During that period of time he was employed as an orderly? A. Yes, sir.

Q. And under your supervision? A. Yes, sir.

Q. Now, prior to that time had he been in the Joint Disease Hospital for an operation on his arm? A. Yes, sir.

Mr. Foley: I object to that, if Your Honor please.

1955 Mr. Fleischman: That's corroboration, Your Honor, of the defendant's testimony.

Mr. Foley: We will concede that he was in——

The Court: It is not within the issues of the case.

Mr. Fleischman: Corroboration of the defendant's testimony.

The Court: You have had enough.

Mr. Fleischman: Exception.

Q. You say he was employed at the hospital between what dates? A. December 15, 1946 to February 8, 1947.

1956 Q. In the capacity of an orderly? A. Yes, sir.

Q. And what are the duties of an orderly? A. Well, they are to wait on the patients and do whatever they can to make them comfortable.

Q. Did you see Lester Haughton when he came to the hospital on December 15th? A. Yes, I did.

Q. Did you see any cut or wound over either one of his eyes? A. No, I didn't.

Q. During the period of time that Lester has been employed at the hospital, have you heard anybody speak ill of him?

The Court: If you are going to make your witness a character witness, you will have to lay your foundation even for that question.

Q. Have you had an opportunity to observe Lester's conduct while he was employed there? A. Oh, yes.

Q. Have you had an opportunity to discuss his conduct with others? A. Yes.

1958

Q. What is his reputation for peacefulness and sobriety? A. Excellent.

Mr. Fleischman: Your witness.

Cross-examination by Mr. Foley.

Q. Did you ever hear, Miss Flett, that he had been convicted of a robbery with a gun? A. No, sir.

Q. Did you ever hear that he had been convicted another time for having a gun? A. No, sir.

Mr. Foley: Thank you. That's all.

Redirect examination by Mr. Fleischman. 1959

Q. Miss Flett, would that have changed your opinion of him in any way? A. No, it wouldn't.

Mr. Fleischman: That's all.

(Witness excused.)

Mr. McDonough: If Your Honor pleases, may we have a short recess at this time?

The Court: All right; step upstairs for a few minutes.

(After Short Recess.)

Cecil Haughton, 741 Jennings Street, Bronx, New York, called as a witness in behalf of the defendant Haughton, being first duly sworn, testified as follows:

Direct examination by Mr. McDonough.

Q. Mr. Haughton, you are the father of Lester Haughton, the defendant? A. I am.

Q. How old is Lester? A. Lester was twenty-four years old the 29th of January of this year.

1961 Q. Now, Mr. Haughton, were you in the courtroom during the time that your son Lester was testifying? A. No, I was not.

Q. You had been here on other days of the court, is that right? A. I have.

Q. But not during the time when Lester had testified? A. No.

Q. Now, Mr. Haughton, on December 13, 1946, were you home? A. I was; not all day.

Q. What time did you arrive home? A. I got home around six o'clock, and I was home most of the time, except going out to buy ice cream and back, until around eleven o'clock when I listened to the news broadcast.

1962 Q. Now, let me ask you this question: When you were home you mean at 741 Jennings Street, is that correct? A. At 741 Jennings Street.

Q. And Lester lives there with you? A. Yes.

Q. Now, do you recall what time on December 13, 1946 that Lester came home? A. Lester came home shortly after the eleven o'clock news broadcast of that particular evening.

Q. Could you fix any definite time? A. No. I can't fix any definite time. It might have been twenty, half hour or so after the news broadcast.

Q. But it was after the eleven o'clock news broadcast? A. After the eleven o'clock news broadcast.

Q. How many other sons do you have? A. Two other.

Q. What are their names? A. One is Cecil, Jr., and the other is Leslie.

Q. Is there any way by which you could fix the time or the occasion of December 13, 1946 in your mind as having seen Lester? A. Yes, I can. 1964

Q. And how can you fix it that you saw him on December 13th after the eleven o'clock broadcast? A. It so happened that my first boy, Leslie, was born on December 14th and his birth date was the very next day of the 13th of December. I had it in mind to get for him a card, and fortunately I had forgotten it, and after Lester returned I remembered that I hadn't secured this card. Lester, as he came in, usually, he generally eats, but on that day he came in and started to take his clothes off for bed. I said, "Oh, my boy, I had forgotten to buy your brother a card." I said, "Well, anyhow, today is Friday, the 13th. Let it go. Tomorrow I will get it." That was what I said. 1965

Q. That's how you fix the occasion? A. That's how I happen to remember.

Q. Of Lester coming home? A. The occurrence of Lester's being home shortly after the news broadcast. It was not twelve o'clock yet.

Q. Were you home on February 8, 1947, at about 1:00 A. M. in the morning? A. Yes, I was home.

Q. That was the occasion when some police officers came into the apartment at 741 Jennings Street? A. Yes.

Q. Will you tell us what happened? A. The 'phone rang, and a nurse who happens to work in the Harlem Hospital, she answered the 'phone. We have an extension in the hall leading to the entrance door, beside the entrance door, and she answered the 'phone and said, "Raymond, this call is yours." He was sleeping then. I woke him and gave him my robe to put on and said, "Answer the 'phone." While answering the
1967 'phone the door bell rang. I said, "I will get it." He said, "No, father; I am here." He opened the door, and, as he opened the door, he was grabbed and pulled outside, and I saw in front of the hand a drawn pistol, and one detective came in. He was pushed back in. What happened in the hall I don't know. While in the hall, I might say this, nevertheless, that he said, "Ah," and he came in. Well, I imagine he might have been startled.

Mr. McDonough: Never mind what you imagined.

The Witness: Well, I am just saying. Anyhow, I imagine then——

1968 Mr. McDonough: Never mind that.

A. (Continuing) He was pushed in and he came into the room. Then I saw two men with drawn pistols, but before that, before the two men, before I saw the two men at least, the first one that came in said—pretty filthy words were used, and I had to call his attention to halt. He used a very dirty word. May I mention the word?

Mr. McDonough: Yes.

A. (Continuing) He said, "You God damn cocksucker." I said, "Gentlemen," I said, "Stop; there are decent people living here." They calmed down and nothing more was said in the way of filth, but they came with the intention, apparently, thinking that it was a rough place. I so concluded because of the nature of the arrest. They charged Lester or Raymond with having stolen a car. They said he stole a car and they have the goods on him that he stole a car every week. I said, "It is peculiar; the boy can't drive," and to my understanding I don't think he did try to learn to drive. I said, "I think this boy has been 1970
going straight, mister." They said, "Oh, no." I said, "Now, listen. If this boy has not been going straight and there is anything wrong with him, honest to God I would prefer you put a bullet through his head right now." That's the way I said, because I was mad, knowing that the boy has been on parole, and if he had done anything wrong which I had no knowledge of. Then after that there were two more men in the house, and all the four men had drawn pistols. They started to pull the drawers and search the entire place. They asked me to show them where Lester's things were. I gladly opened every drawer and every compartment where Lester's things was and showed it to them. They wanted me to open 1971
my things. I opened my chifferobe and my trunks, and, as I turned to the clothes closet, they said, "What is in there?" I told them, "Oh, yes, he has a coat in there," and I opened the clothes closet. I had to put my hand behind to pull the latch, a little latch there, and when I turned around I was covered with a gun. I was very

much scared myself, as I hadn't known the nature of the arrest. I didn't blame the men for so acting, but I was scared to death.

Q. Well, now, Mr. Haughton, were you in the room when Lester got dressed? A. Pardon me, sir. Just at that point there was a lady——

Mr. Foley: I would like the witness to be directed to answer the question.

The Court: Yes; answer the question.

Q. Were you in the room when Lester got dressed? A. Yes.

1973 Q. Will you tell us or describe what happened there while Lester was getting dressed? A. When Lester was getting dressed, I don't know exactly because my face was turned in different directions, but what I did see is what I will say. He was ordered to sit down on the bed, and he sat on the bed. They said, "Put your hands on your knees," and he did that. "Put your pants on." Just at that time I was called to open a trunk, and my head bowed in the trunk, and when I turned around I saw Lester jump, straightening up on the bed, like that. What happened I don't know.

Q. Did Lester pick up his own clothes or were
1974 the clothes handed to him piece by piece? A. That I can't recall. I know this, though, that as far as the hat was concerned, he was told, "Where's your hat?" He was very obedient to keep his hands on his knees. He really didn't move them. He said, "Where's your hat?" He did like that and pointed his head in the direction, and I handed his hat to the detectives.

Q. And then subsequently Lester was taken out by these officers? A. By these officers.

Q. And he has not been home since? A. He has not been home since. Pardon me, Mr. McDonough. May I make a statement that I have forgotten?

Q. Was it in reference to what happened? A. Yes, in reference to this. There was also a lady detective there. There were four men and a woman, and her hand was in her pocket-book most of the time.

Q. Are you employed, Mr. Haughton? A. I am now employed.

Q. And what is your business? A. Lathing.

Q. And where are you employed at the present time? A. At the present time I am employed at 416 East 50th Street. 1976

Mr. McDonough: Thank you.

Mr. Foley: No questions.

(Witness excused.)

Mr. McDonough: At this time, Judge, I am very sorry, but I would like to ask for a recess until tomorrow morning. There was another witness that we were expecting this afternoon who has not appeared.

The Court: You have had ample time. You have had the week-end for that.

Mr. McDonough: I realize that, Judge, and, as a matter of fact, we expected the 1977 witness here. We thought he would be here, but apparently he is not.

The Court: How many more witnesses do you expect to call?

Mr. McDonough: One.

The Court: All right. Have the witness here tomorrow morning. I am not going to wait any longer.

Mr. McDonough: Yes; I realize that.

The Court: You are admonished by the Court not to discuss the case and form no opinion until the matter is submitted to you by the Court.

Half-past ten tomorrow morning.

Defendants remanded.

(Whereupon, the further trial of the case was adjourned to April 1, 1947, at 10:30 A. M.)

1979 New York, April 1, 1947.

(TRIAL CONTINUED.)

Before: HON. JAMES M. BARRETT, *County Judge*, and a Jury.

Appearances: The same as heretofore noted.

CECIL HAUGHTON, JR., 276 West 135th Street, New York, N. Y., called as a witness in behalf of the defendant Haughton, being first duly sworn, testified as follows:

1980

Direct examination by Mr. McDonough.

Q. Mr. Haughton, are you married? A. I am.

Q. Do you have any children? A. I haven't.

Q. Are you employed? A. I am.

Q. And where are you employed? A. International Auto and Body works.

Q. How long have you been employed there? A. About two weeks.

Q. What do you do there? A. Repair work on automobiles.

Q. How old are you? A. Twenty-one.

Q. Are you a brother of Lester? A. I am.

Q. With whom do you reside at this address on 135th Street? A. With my sister-in-law, my mother-in-law and my wife.

Q. How long have you lived there? A. I would say six months; six or seven months.

Q. Do you recall December 13, 1946? A. I do.

Q. Did you see your brother Lester on that day? A. I did. 1982

Q. Where did you see him? A. My house.

Q. About what time did you see him? A. It was about five or five-thirty.

Q. How long did he stay there at your house? A. Till about a little before ten or a little after ten.

Q. Can you tell us how you recall the date of December 13, 1946? A. It was my brother's birthday, and we were planning what to give him for his birthday.

Q. You say December 13th was your brother's birthday? A. No, the next day was, December 14th.

Q. And when you say your brother, what brother is that? A. Our oldest brother. 1983

Q. What is his name? A. Leslie Haughton.

Mr. McDonough: That's all.

Cross-examination by Mr. Foley.

Q. By what name do you call your brother here? A. Lester.

Q. Did Lester come to your home about five o'clock that evening? A. Around that time; around five or five-thirty.

Q. Who was there when he came? A. Myself, my wife, my mother-in-law and my sister-in-law.

Q. Did he have dinner with you there that evening? A. He did.

Q. How do you fix the time that he left? A. Around ten, a little after ten.

Q. How do you fix it in your mind? A. In my mind?

Q. Yes. A. I will say around ten minutes of
1985 ten or a little after ten; something like that.

Q. How do you recall it; did you look at the clock when he left? A. No, I didn't. It was around that time, because we were listening to a program. I think it went off around ten o'clock.

Q. What program was it? A. I am not sure. I know it went off around ten o'clock.

Q. When was the first time that you discussed with anybody the fact that he was there on December 13th? A. First time I discussed with anybody?

Q. Yes. A. I discussed it a little after he got arrested.

Q. How long after? A. I would say about a week.

1986 Q. That would be about February 15th? A. About then; around that time.

Q. What is the name of the brother, Lester, whose birthday is the 14th? A. That's right.

Q. Where is he? A. Same address.

Q. Does he live with you? A. No; he lives in the next apartment underneath me.

Q. Did you get him something for his birthday? A. We did; both of us together.

Q. Did Lester chip in? A. Yes, he did.

Q. Was he working at the time? A. No, he wasn't.

Q. How much did you two chip in? A. I think it was like a dollar and a half.

Q. Did you see your brother whose birthday was the 14th? A. We did.

Q. On his birthday? A. We did.

Q. Was Lester with you? A. He was.

Q. Now, the first time you spoke of this to anybody was about a week after his arrest? A. That's right.

Q. Did you talk to your father about it? A. 1988
No.

Q. Did you talk with the attorneys about it? A. No, I didn't.

Q. When was the first time you spoke to them about it? A. This morning. I saw them this morning.

Q. Were you supposed to be here yesterday? A. No, I wasn't; not to my knowledge.

Q. You never received a subpoena, did you? A. No.

Q. Or a request from counsel to be here? A. I didn't.

Q. When was the first time you were asked to come here to the trial? A. I came this morning on my own accord and counsel called me. He 1989
told me I would have to take the stand.

Q. Did anybody ask you to come here today or did you just— A. (interrupting) I came alone to court.

Q. Nobody asked you to? A. That's right; nobody asked me.

Q. And you are entirely sure that you were not asked to be here yesterday? A. That's right; I am sure.

1990 *Charles H. Hochman—For People—Direct.*

Mr. Foley: That's all.

Mr. McDonough: Nothing further.

(Witness excused.)

Mr. McDonough: Defendant Haughton rests.

The Court: People?

Mr. Foley: The People will call Dr. Hochman.

CHARLES H. HOCHMAN, recalled to the witness stand in behalf of the People, further testifies
1991 in rebuttal as follows:

Direct examination by Mr. Foley.

Q. You were on the stand before in this trial, doctor? A. I was.

Q. And at that time your testimony was confined to your findings on the autopsy? A. That's correct.

Q. And your opinion as to the cause of death? A. That's correct.

Q. Can you tell us now at what time you arrived in the District Attorney's office on the evening of February 7, 1947? A. At eight-thirty P. M. on February 7, 1947.

1992 Q. Did you go at that time to Mr. Ryan's room? A. I did.

Q. Did you see either of the defendants there at that time? A. George Moore.

Q. Did you have a conversation with George Moore relative to wounds or scars? A. I did.

Q. Will you tell us, please, what took place at that time? A. Well, I had been asked to examine George Moore, his left arm in particular,

for wounds which were supposed to have been inflicted by a bullet.

Mr. Wilkinson: I will object to any statement.

Q. Tell us what you did, doctor, and what conversation you had with him? A. Well, he exposed his arm to me, and I looked at it and I found the following scars on it: There were two scars on the outer side of the left arm an inch in diameter. There was a scar on the anterior, that's the front, of the left arm in the middle, three-eighths of an inch, and on the inner side 1994
of the left arm was a scar three-sixteenths of an inch, and on the inner side of the left forearm was a scar three-eighths of an inch. These two scars he indicated to me were the results of a wound.

Q. A bullet wound? A. A bullet wound.

Mr. Ehrman: I object to that and move to strike out the answer. The doctor said it was the result of a wound, and Mr. Foley said it was a bullet wound.

The Court: Did he say what kind of a wound?

The Witness: Bullet wound, he said. 1995

Q. Did you find these wounds that the defendant said were inflicted by a bullet, or did he point them out to you? A. He pointed them out to me.

Q. How long did you remain in Mr. Ryan's room after you arrived? A. Well, I remained there almost to shortly after midnight.

Q. During that time did the defendant complain to you about a back injury? A. He did not.

Q. When you examined him, did you see any signs of blood upon his clothing? A. I did not.

Q. Did he have a bloody nose? A. He did not.

Q. While you were there, did Mr. Ryan kick him out of the chair?

Mr. Wilkinson: I will object to this, unless he states the time and unless the witness knows.

The Court: Sustained.

Q. When did you arrive there, doctor? A. At eight-thirty P. M.

1997 Q. And did you stay in Mr. Ryan's room until midnight? A. Practically all the time.

Q. Did Mr. Ryan kick this defendant while you were there? A. He did not.

Q. Did you while you were there hear anybody raise his voice in a menacing tone to this defendant? A. I did not.

Q. Did you hear anybody use bad or threatening language to him? A. I did not.

Q. Were you free whenever you saw fit to talk to this defendant? A. I did.

Mr. Foley: He is your witness.

1998 *Cross-examination by Mr. Wilkinson.*

Q. Now, doctor, you say you were there from about eight-thirty until midnight? A. That's correct.

Q. And you said practically all the time? A. That's right.

Q. You saw this defendant? A. That's right.

Q. Practically all the time? Would you explain that a little better to us? A. I may have stepped out into the hall to get a drink of water.

Q. You stepped out into the hall to get a drink of water? A. That's right.

Q. Was that the only time you did not see George Moore? A. That's correct.

Q. When you stepped out to get a drink of water? A. That's right.

Q. How many times would you say you stepped out to get a drink of water? A. I may have stepped out once or twice.

Q. And on those two occasions you did not see 2000
George Moore? A. That's correct.

Q. And those were the only two occasions from eight-thirty until twelve that you did not see him, is that correct? A. That's correct.

Q. Were you in Mr. Ryan's office all the time? A. That's correct.

Q. Were you seated or standing? A. I was seated; I was standing.

Q. Do you know that Mr. Ryan had testified that on at least three occasions George Moore left his room? A. No.

Mr. Foley: I object, if your Honor please.

The Court: He may ask him the question.

Mr. Foley: I would like him to fix the 2001
time.

The Court: Overruled. Ask him the direct question.

Mr. Wilkinson: I have already asked him.

Mr. Foley: If your Honor please, the witness's attention has been directed to what may have happened from eight-thirty on.

That's the time of his arrival. I submit he cannot be asked about what had happened before he came there.

Q. Well, did this happen before you came?

The Court: Let me hear the question. I didn't understand that.

(The Court Reporter reads the question as follows: "Q. Do you know that Mr. Ryan had testified that on at least three occasions George Moore left his room?")

Mr. Foley: I renew the objection.

2003 The Court: Objection sustained. I direct you to ask this witness a direct question.

Q. Dr. Hochman, if I told you that Mr. Ryan—

The Court: Don't go any further. Ask the witness whether Moore left the room.

Mr. Wilkinson: I have asked him.

The Court: What did he say?

Mr. Wilkinson: He said "No."

The Court: All right; proceed.

Mr. Wilkinson: Now, I respectfully ask for permission to examine this witness as to his credibility as to those statements.

2004 The Court: I didn't understand that the witness said that the defendant did not leave the room.

Mr. Wilkinson: This witness has testified that at no time did George Moore leave the room.

The Court: Were you present when Moore left the room at any time?

The Witness: No; I don't believe so.

Mr. Wilkinson: Now, I respectfully ask permission——

The Court: I am not stopping you.

Q. Now, Dr. Hochman, if Mr. Ryan testified that on three or four occasions George Moore left his office in company with detectives and was taken to another room, would you say that that statement was correct or incorrect?

The Court: Does that refresh your recollection as to whether or not the defendant Moore left the room while you were present?

Mr. Foley: May we not have the time fixed? The question quotes the testimony of another witness. 2006

The Court: What page are you reading from?

Mr. Wilkinson: I am not reading from any page. I didn't get it yet, Judge.

The Court: Get it.

Mr. McDonough: Judge, may I at this time ask that you tell the jury that any statements that are made at this time are not to be taken as evidence against the defendant Haughton. As I understand it, all of this goes on between eight-thirty and midnight.

Mr. Foley: That's right. 2007

The Court: The Court will receive it for what it is worth at this time until I pass upon it. I can't pass upon it until I hear it.

Mr. Wilkinson: I refe to page 459 of the testimony.

Q. Now, Dr. Hochman, Mr. Ryan testified in answer to a question, the following: "Q. Well,

now, before you got any admissions would you know exactly how many times——"

The Court: Do it in an easier way for the witness to understand it. Simply direct his attention to what Mr. Ryan is alleged to have said at that time.

Q. Dr. Hochman, in answer to a question as to how many times George Moore left Mr. Ryan's office before admissions were obtained from him, Mr. Ryan testified that it might have been three or four times.

2009

The Court: Does that refresh your recollection?

The Witness: It does.

A. I came in at eight-thirty. The first confession was made shortly after I came in. It was about, maybe fifteen minutes after I came in, and you asked me was he out of the room between eight-thirty and midnight. This refers to previous and that states the time, therefore I can recall now that he was in the room the rest of the time. This is previous to his confession, his first confession, which was some time shortly after I arrived.

2010

Q. Oh, I see, this refers to something that happened previous? A. That's right. I mean, according to what you have read there.

Q. Have you read this testimony? A. No.

Mr. Foley: Now, I object, if your Honor please.

Mr. Wilkinson: He can answer it.

The Court: He has answered.

Mr. Foley. The witness has properly characterized it.

Q. Have you discussed this testimony with anybody, what Mr. Ryan testified to? A. No. This is the first time I have heard this question.

Q. How do you know what this refers to, doctor? A. You read it.

Mr. Foley: Now, I object to it.

The Court: No argument, now.

Q. Did you discuss with anyone before you took the stand today what you were going to testify to? A. Yes; I spoke to Mr. Foley. 2012

Q. About your testimony? A. About what had occurred that evening.

Q. Did anybody tell you of any conversations between Moore and Ryan before you got to the office? A. No.

Q. Did anybody tell you where Moore was before you got to Mr. Ryan's office that night? A. No.

Q. Did anybody tell you in what rooms Moore was before he got to Mr. Ryan's office that night? A. No.

Q. Do you know what time Moore got to Mr. Ryan's office? A. No. 2013

Q. Who else was in the room when you arrived there at eighty-thirty? A. Some of the detectives were in there.

Q. How many? A. There may have been two or three.

Q. Anyone else? A. The owner of the store was brought in.

Q. Mr. Shaw? A. That's right.

Q. Was he present all evening, too? A. He was there for most of the evening.

Q. Now, did you examine George Moore before Mr. Ryan started on the statement? A. I did.

Q. Did you have him remove his shirt? A. I don't recall if he removed his shirt or just pulled his sleeve up.

Q. You were making a medical examination at the time, weren't you; a physical examination? A. No; I was just examining his arm for these wounds.

2015 Q. In your capacity as a doctor? A. That's correct.

Q. Did you examine his whole arm or a portion of it? A. The whole arm from the shoulder down.

Q. Did he remove his shirt for you to make the examination? A. I said I don't recall if he removed the shirt or just rolled his sleeve up.

Q. Does that paper have any notes on it? A. No; that has nothing on it.

Q. When were those notes put down on that paper? A. On that night shortly after I had looked at it.

Q. May I have a look at it, please? A. Certainly (handing paper to Mr. Wilkinson).

2016 Q. Now, would you be able to testify without looking at this paper to refresh your recollection? A. I might.

Q. Now, you found two scars on the upper side of the left arm? A. That's correct.

Q. Now, you only examined Moore's left arm, is that correct? A. That's correct.

Q. What were they, bullet wounds? A. No; he said that were vaccinations.

Q. You also referred to two scars on the inner side? A. That's correct.

Q. Of the left arm? A. That's correct.

Q. What do you say those scars are? A. They are simply scars of injury.

Q. Have you an opinion as to the cause of those scars, based on your examination of those wounds? A. No, I have not.

Q. You as a doctor are not able to say whether they were bullet wounds or not, is that correct? A. Well, they weren't classical bullet wounds as I would recall. Then they are healed.

Q. But from your examination as a doctor, 2018
were you able to determine whether they were bullet wounds or not? A. No, I was not.

Mr. Wilkinson: No further questions.

Redirect examination by Mr. Foley.

Q. Did the defendant tell you those wounds were caused by a bullet? A. He did.

Mr. Foley: No further questions.

Mr. Fleischman: If your Honor pleases, I ask your Honor at this time to instruct the jury that whatever the defendant Moore told the doctor is not binding on the defendant 2019
Lester Haughton.

The Court: I so instruct.

Recross-examination by Mr. Wilkinson.

Q. Now, Doctor, I show you your own notation that you made on the night of February 7, 1947, and I will ask you does it appear anywhere there

a conclusion that those scars were bullet wounds? A. It does not.

Mr. Wilkinson: No further questions.

(Witness excused.)

RICHARD SHAW, recalled to the witness stand in behalf of the People, further testifies in rebuttal as follows:

Direct examination by Mr. Foley.

2021

Q. Mr. Shaw, I believe you have already testified that on the night of February 7, 1947 you were in Mr. Ryan's room in the District Attorney's office? A. Yes, sir.

Q. At a time when Moore, one of the defendants, was present? A. Yes, sir.

Q. Did you testify that you were there continuously from the time the first statement was finished until the second one was begun? A. Yes, sir.

Q. You had been there before that and you were there after that? A. Yes, sir.

Q. But you were there for all of the time between the two statements given by Moore? A. Yes, sir.

2022

Q. Did Mr. Ryan kick Moore out of a chair during that time? A. No, sir.

Q. All the time you were there that evening, did you ever hear anybody use threatening language? A. No, sir.

Q. To Moore? A. No, sir.

Q. Did you ever hear anyone raise his voice to him? A. No, sir.

Q. Did you observe anyone display hostility to him? A. No, sir.

Q. Was he given coffee and food in your presence? A. Yes, sir.

Q. And was he supplied with tobacco? A. He was.

Q. And were you free to speak to him when he was not actually making statements to a stenographer? A. Yes, sir.

Q. And did you? A. Yes, sir.

2024

Mr. Foley: Thank you.

Cross-examination by Mr. Wilkinson.

Q. Mr. Shaw, you, I think, saw him in Mr. Ryan's office, isn't that correct? A. I saw him in the corridor first; then I saw him in Mr. Ryan's office.

Q. How long were you in the corridor when you saw him? A. I have been there since three o'clock in the afternoon.

Q. How long were you standing there observing Moore in the corridor? A. He just walked past in the corridor.

Q. Momentarily, is that correct? A. That's right. 2025

Q. And you saw in Mr. Ryan's office they gave him coffee and cake, is that correct? A. That's right.

Q. And this was all before they got those papers signed? A. That was in between papers.

Q. In between the first confession and the second? Yes, sir.

Q. They gave him coffee and cake? A. Yes, sir.

Q. And cigarettes? A. That's right.

Q. They spoke inside to him? A. Yes, sir.

Q. Are you able to say how they spoke to him in the room each time that they took him out, the detectives? A. When they took him out I never saw him.

Mr. Foley: That question is ambiguous. The man was in the room.

The Court: Sustained.

2027 Q. Well, you do know that they took him out of Mr. Ryan's office and into a room where only detectives were. Do you know that?

The Court: Do you know that, yes or no?

A. No.

Q. Well, you weren't in Mr. Ryan's office all the while the defendant was there, were you? A. No.

Q. How long after he got into Mr. Ryan's office did you finally go in? A. I would say about an hour.

Q. Do you know what happened in there of your own knowledge in that hour? A. No.

2028 Q. Do you know what happened in any of the rooms on the sixth floor when the defendant was in there with the detectives alone? A. No.

Q. Do you know Detective Foden? A. I do.

Q. Do you know a fellow by the name of John Starnes? A. Starnes?

Q. Yes; Starnes. A. No; the name isn't familiar to me.

Q. Did you ever look Starnes over in the 42nd Precinct? A. I looked over a lot of men. I don't know their names.

Q. Did anybody ever tell you the names of the men you were looking over? A. Yes; some of them.

The Court: Just a minute. This is going beyond the scope and sphere of this examination.

Mr. Wilkinson: He is recalled as a rebuttal witness.

The Court: That's right; he is called for a particular purpose. 2030

Mr. Wilkinson: For a particular purpose, and I am questioning for a particular purpose.

The Court: No; you are going beyond the limits of your examination.

Mr. Wilkinson; I respectfully except, and I ask permission to pursue this line of questioning.

The Court: You already had that line before.

Mr. Wilkinson: I respectfully except. That's all.

Mr. Foley: Thank you, Mr. Shaw.

(Witness excused.) 2031

JAMES E. HONOHAN, 1754 Hobart Avenue, Bronx, New York, called as a witness in behalf of the People, being first duly sworn, testified in rebuttal as follows:

Direct examination by Mr. Foley.

Q. What is your official title in the District Attorney's office? A. Investigator.

Q. You are not a county detective? A. I am not.

Q. Did you on the 7th day of February, 1947, take your car and drive county detectives to the
2033 Tombs to pick up Moore? A. I did.

Q. Did you drive them back again to this building? A. I did.

Q. With Moore accompanying them? A. I did.

Q. When you entered this building, where did you go? A. We went directly to Chief County Detective Hanley's office.

Q. Did you remain in that room? A. No; I left that room and went back to my own room, to Mr. Breslin's room.

Q. From that time, leaving Moore there upon his entry to this building, from the time you left the room, when did you next see Moore? A. I didn't see Moore after that until I saw him in
2034 this court-room a few days ago.

Mr. Foley: Thank you.

Cross-examination by Mr. Wilkinson.

Q. What are your duties as an investigator? A. Do whatever investigation is required by the District Attorney, Mr. Breslin, that I am assigned to; that he requests of me.

Q. Did Mr. Breslin assign you to go down and get Moore? A. He did.

Q. With whom did you go down? A. Pardon me?

Q. With whom did you go down to the Tombs? A. County Detectives Denning and McGarry.

Q. What time did you get back to the County Building? A. In the neighborhood of about 6:00 P. M.

Q. Did you leave the County Building then? A. No, I did not.

Q. How late that night did you remain in the County Building? A. Remained there all night till about 5:00 A. M. the following morning. 2036

Q. In the District Attorney's office? A. That's right.

Q. You remained there from 5:00 P. M. the night before till 5:00 A. M. the next morning, is that correct? A. That's correct.

Q. And you say that you did not see Moore at any time in those twelve hours? A. I did not.

Q. Do you work with McGarry, and what's the other man's name? A. Denning.

Q. Denning? A. I do not.

Q. Well, you worked with them that night, didn't you? A. I did.

Q. Have you worked with them since? A. I have. 2037

Q. And since that night have you been to the Bronx County Jail on occasions? A. I have.

Q. And have you taken prisoners from the Bronx County Jail to the District Attorney's office? A. I have.

Q. And have you not returned prisoners from the District Attorney's office to the Bronx County Jail? A. Prisoners not, on no occasion.

Q. Whatever you want to call them?

Mr. Foley: Now, I object to that, if your Honor please, whether they are prisoners or not.

The Court: Objection sustained.

Q. Have you returned material witnesses to the Bronx County Jail from the District Attorney's office? A. I have.

Q. Between February 7th and the present time, is that correct? A. That's right.

Q. Do you know where Mr. Ryan's office is? 2039 A. I do.

The Court: Where is it?

The Witness: It is on 6-M.

Q. Do you ever go up near Mr. Ryan's office? A. Very seldom.

Q. Are there other rooms on the floor than Mr. Ryan's office, the same floor? A. There are.

Q. Was Frank McGarry with you that night between 5:00 P. M. and 5:00 A. M.? A. He was not.

Q. Did you at any time see Frank McGarry that night? A. No, I don't think I did; not after I left him at 6:00 P. M.? 2040

Q. Is there any doubt about it? A. No, there is not.

Q. You mean you are definitely certain of it? A. I am certain I did not see McGarry after he left me at 6:00 P. M.

Q. Now, isn't it true on that night that you were up on the 6-M floor and you took George Moore from Mr. Ryan's office into another office? A. It is not.

Q. And isn't it true that you struck him in this other office? A. I did not.

Q. Isn't it true that you are one of the men that struck Moore on the night of February 7th on 6-M floor? A. I am not.

Mr. Wilkinson: No further questions.

Redirect examination by Mr. Foley.

Q. As a matter of fact, when you stated to counsel that you were in the District Attorney's office from 6:00 P. M. until 5:00 A. M. you mean that's when you went off duty that morning? A. 2042
That's right.

Q. You didn't stay there continuously, did you? A. I did not.

Q. Did you accompany Mr. Breslin to Harlem? A. I did.

Q. And did you there find and bring to the District Attorney's office a witness named Banks? A. I did.

Q. Did you return to Harlem again with Mr. Breslin and detectives and Banks? A. I did.

Q. Did you come back then with those detectives and Banks and the material witness Askew? A. I did.

Q. And did you have many assignments during 2043
the evening? A. I did.

Q. At the request of the District Attorney to whom you were assigned?

Mr. Wilkinson: I will object to the statements. Ask the witness questions.

Mr. Foley: Well, that's all.

Mr. Wilkinson: No further questions.

(Witness excused.)

EDWARD B. WILLIAMS, 601 East 167th Street, Bronx, New York, called as a witness in behalf of the People, being first duly sworn, testifies in rebuttal as follows:

Direct examination by Mr. Foley.

Q. Where are you employed, Mr. Williams? A. I am now employed in the Grand Central post office.

Q. Where were you employed on the night of February 7, 1947? A. I was employed in this building.

2045 Q. In what capacity? A. As a cleaner.

Q. And where were you assigned to clean? A. On the 6-M.

Q. Which part of 6-M did you have? A. I had the north end and the south end, it was split, but I was supposed to take care of the floors on the both ends.

Q. Were you the only colored porter or cleaner who was on 6-M that night? A. Yes.

Q. Is the north end the one in which Mr. Ryan's room is, the Chief Assistant? A. Yes.

Q. What time did you come on duty? A. Four o'clock in the afternoon.

Q. How late did you work? A. Until twelve.

2046 Q. Midnight? A. Midnight.

Q. During that time were you in the north end of 6-M? A. Yes.

Q. By the north end do you mean the part of the sixth mezzanine floor from the elevators in the center of the floor to MR. Ryan's room on the north? A. Yes.

Q. Were your duties that night cleaning? A. Yes.

Q. Were you at any time restricted from moving around and tending to your duties? A. No.

Q. Was there ever a time during that tour of duty on February 7th when you were chased from a toilet by officers? A. No.

Q. By officers who were accompanying a colored man to the toilet? A. No.

Q. Were you at one time on that evening requested to go into Mr. Ryan's office? A. Yes, I was.

Q. Was either one of these defendants now here in that room at that time to your knowledge? A. Yes. 2048

Q. Which one was it? A. The gentleman over there.

Defendant Moore: There were four of us in there. What are you lying for?

The Court: Just a minute, now. That is not going to accomplish anything for you. Keep your mouth closed and don't you open it again.

Q. Is that the one you mean? A. That was the one.

Q. What did you do in that room on that occasion? A. I picked up the ash-tray and the different coffee containers that were left and swept the 2049 floor.

Q. Do you know about what time that was? A. That was some time after ten o'clock; the exact minute I couldn't say.

Mr. Foley: He is your witness.

Cross-examination by Mr. Wilkinson.

Q. How long did you work at the County Building here? A. Since August 10th.

Q. Of 1946? A. That's right.

Q. Until what date? A. 20th of March; this past March.

Q. 20th of March? A. That's right.

Q. Your leaving didn't have anything to do with this case, did it? A. No, sir.

Q. Did they question you about this case at all? A. No.

2051 Q. You say you are in the post office now? A. Yes.

Q. Is that a civil service job? A. Yes.

Q. You took an exam for it? A. Yes.

Q. And you were appointed? A. Yes.

Q. Are you acquainted with any members of the District Attorney's office? A. No; only in my capacity as a cleaner while I was here.

Q. You live in the Bronx, though? A. That's right.

Q. Whereabouts in the Bronx? A. 601 East 167th.

Q. Where is that located? A. On the corner of Boston Road and 167th Street.

Q. Well, are you acquainted with any members
2052 of the staff of the District Attorney? A. I only know them by working around there, seeing them.

Q. You never met them outside at all? A. No.

Q. How long had you been on this civil service list? A. Well, I am just on the list. I don't know when I was put on. I took the examination August 1945.

Q. And you were appointed March when? A. 20th.

Q. March 20th? A. Past.

Q. That was the date that this case started, is that right, March 20th? A. That I wouldn't know, sir. I don't know anything about that.

Q. Do you know how long this case is on? A. No, I don't.

Q. You say you started working at four o'clock that night? A. Yes, sir; that's the usual hour, sir.

Q. What floors did you have to clean in this building? A. 6-M.

Q. Just the one floor? A. That's right.

Q. 6-M doesn't go around the whole building, 2054
does it? A. No.

Q. 6-M is just along one side of the building, is that right? A. That's right.

Q. What side would that be? A. That would be the west side.

Q. 6-M is one side of the building occupied by the District Attorney, is that right? A. That's right.

Q. And your assignment from four to twelve on the night of February 7th was to clean the one side of the building, the west side occupied by half the District Attorney's office. Is it 6-M? A. Yes. Well, I am pretty sure that the full floor is occupied by the District Attorney.

Q. There were four floors? A. The full floors, 2055
the north and the south end.

Q. That's on 6-M? A. That's right.

Q. But you only had to clean the west side, is that right? A. The hall runs north and south.

Q. And that's the west side of the building? A. It is the west side of the building.

Q. You just had to clean the offices on the west side of the building? A. That's right.

Q. Well, how many offices are there on that floor, 6-M? A. I couldn't tell you exactly how many. I couldn't tell you exactly.

Q. Did you ever clean them before February 8th? A. Yes.

Q. How many times before February 8th were you assigned to 6-M? A. Oh, for the time that I have been here.

Q. Since August? A. That's right.

Q. Would you say there are about ten offices? A. Well, I wouldn't say exactly how many there are.

2057 Q. I mean, that was your sole job from the hour of 4:00 P. M. until midnight? A. That's right.

Q. To take care of the west side of the building on 6-M floor, is that right? A. That's right.

Q. And you did that every night? A. That's right.

Q. From August 20th was it? A. August 10th.

Q. August 10th until February 8th or March 20th of this year, is that correct? A. That's right.

Q. August 10th until March 20th? A. That's right.

Q. Every night, and you cleaned this same portion? A. That's right.

2058 Q. Well, now, can you estimate how many offices are on just that west side alone?

Mr. Foley: I object to that, if your Honor please. We have been over this.

The Court: Overruled.

Mr. Foley: And I contend it is immaterial.

The Court: Overruled: You may answer.

A. I would say that there are probably about twelve.

Q. Twelve? A. About twelve; ten or twelve.

Q. On 6-M? A. That's right.

Q. Now, are these offices separated by a waiting room in the center?

Mr. Foley: I object, if your Honor please. That's an ambiguous question.

The Witness: I don't understand that.

Mr. Foley: Separated from what?

Mr. Wilkinson: I will withdraw the question. 2060

Q. Are the offices on the north end and the south end separated by what is known as a waiting room or a reception room?

The Court: Is there a reception room?

A. That's right.

Q. So that you would have approximately six offices on the north side and about six on the south side, is that correct? A. I wouldn't say that.

Q. Well, how many on either side would you have? A. I wouldn't know that, sir.

Q. Well, now, on the night in question, February 8th, were you cleaning? 2061

Mr. Foley: Now, if your Honor please, I object. The questions heretofore directed to this witness have concerned the night of February 7th.

Mr. Wilkinson: Whatever date it was.

The Court: That's very important.

Q. On the night of February 7th, what time did you get to 6-M floor of this building? A. Oh, it must have been about a quarter after four, I suppose. About that time. That's about the time we get upstairs.

Q. Now, then, did you work in the offices north of the reception hall or in the offices south of the reception hall? A. I began working in the north hall.

Q. Do you begin up near the north end? A. No.

Q. Or the south end? A. We first sweep the
2063 floors. We don't go in the offices right away.

Q. Now, the north end is where Mr. Ryan's office is, is that correct? A. Yes, sir.

Q. So that when you got to 6-M about 4:15 you started sweeping in the north end where Mr. Ryan's office is, is that correct? A. Well, not the offices; not at that hour. We generally sweep what parts of the offices, I mean what parts of the building that we are sweeping that they are not working, that is not being used by the people that's coming in.

Q. However, did you start working in the north end? A. Yes; when I did start.

Q. And that was some time after four? A. Yes.

2064 Q. Now, how late did you work in the north end before you completed your duties in the north end? A. We don't work that way. We don't just complete one end. We have a system about what we do.

Q. Was there somebody else working with you? A. There are ladies working on the floor.

Q. They were working with you this night? A. They work every night.

Q. How many people were working there cleaning in those offices with you that night? A. Two.

Q. They were in and around Mr. Ryan's office, too? A. No, no; they had to take care of the furniture.

Q. Take care of the what? A. Furnifure.

Q. Did Mr. Ryan's office have any furniture? A. Yes.

Q. When did you clean the south wing? A. What I would do is divide it. I only take care of the floors on the south end, that is, the floors in the offices, to keep the wax polished. That's the extent of my duties on the south end.

2066

Q. In the south wing you merely clean the floors? A. That's the floors in the offices.

Q. Of the offices? A. That's right.

Q. And the north wing, what do you do there? A. I clean the floors in the offices and also do the sweeping in the hall.

Q. Were you in the south wing that night? A. Yes, I was.

Q. When were you there? A. Well, I couldn't give you the exact hour I was there.

Q. You remember the hour you were in Mr. Ryan's office in the north wing, don't you? A. I didn't tell you that I remembered the hour I was there. I told you it was some time after ten o'clock.

2067

Q. You remembered that? A. Some time after ten o'clock.

Q. Now, tell us some time you were in the south wing. A. It was also some time after ten o'clock.

Q. Well, where were you from four until ten? A. From four until ten I was on the floor at my assignment.

Q. In the north wing or the south wing? A. I couldn't say definitely just whether I was in both wings during my tour of duty or what hours I was in what part. I could not say definitely.

Q. Now, is the only thing definite that you remember about that night that Mr. Ryan had you in his office some time after ten? Is that the only thing definite that you know? A. I know that I was in the office and it was after ten o'clock. That I remember. I mean, Mr. Ryan does not ask me to come in his office to do anything like that. That was the only time he ever asked me, so naturally——

2069 Q. (interrupting) You would look at the clock? A. No, I wouldn't look at the clock, but I would have to remember it, because he doesn't make a habit of doing those things.

Q. That was some time after ten? A. It was; yes, sir.

Q. How late did you stay on that floor that night? A. Twelve o'clock.

Q. Now, did you see many detectives there that night in the north wing? A. Yes, I did.

Q. How many would you say? A. Don't hold me down.

Q. I won't hold you down. Just give us an idea what the picture looked like. A. I would

2070 say I saw about six at a time, at least.

Q. Were they in groups of six? A. No; on the floor. They were in different places.

Q. In the corridor? A. Yes.

Q. Were the rooms being occupied? A. Yes. I think some of the district attorneys.

Q. Do you know who was in the rooms? A. No, I don't. I don't know definitely who was in any room, but Mr. Ryan's room.

Q. Did you look in any of the rooms at any time? A. No.

Q. Do your duties take care of the wash-rooms on the floor, too? A. Yes.

Q. I mean, is that part of your duty, to make sure the wash-rooms are kept in order? A. Yes.

Q. And do they have wash-rooms on 6-M? A. Yes.

Q. And how many wash-rooms do they have? A. Two.

Q. Now, between 4:00 P. M. and midnight, it was necessary for you to check the wash-rooms, was it not? A. Yes. 2072

Q. That night was no exception. You checked the wash-rooms then? A. That's right.

Q. Do you remember an incident of walking into the wash-room when George Moore was in there? A. No.

Q. Do you know George Moore? A. I only know him from the time I saw him; one time I saw him.

Q. You only saw him once before? A. I only saw him once all together to my mind.

Q. Before today? A. Not before today, but before the time that you are talking about.

Mr. Wilkinson: What was that answer?

The Court: Stenographer? 2073

(The Court Reporter reads the last answer as follows: "A. Not before today, but before the time that you are talking about.")

Q. You saw him once before the time I was talking about? A. That's right.

Q. And do you know what time I am talking about? A. Yes. I suppose so. You are talking about the night of February 7th.

Q. You saw him once before that? A. Before the time that we are talking now, I says. You asked me if I had seen him. I told you, "Yes. I had seen him once, and that was, the only time was February 7th, up until the time you are speaking here."

Q. Did you see him once that night or did you see him many times that night? A. Once that night.

Q. Did you walk into a wash-room and see him in there? A. No.

Q. Well, what time or times on the night of
2075 February 7th did you in the performance of your duties go in to the wash-rooms on 6-M? A. State your question again, counsellor.

The Court: Stenographer, repeat it.

(The Court Reporter repeats the last question as follows: "Q. Well, what time or times on the night of February 7th did you in the performance of your duties go into the wash-rooms on 6-M?")

A. Well, the only answer I can give to that is, it was some time after four o'clock, several times after four o'clock, as a matter of fact, but the exact times that I went in I couldn't say, because
2076 we have a little room off there that we keep the supplies in. When I go in for supplies as a rule I go in and check the toilet.

Q. But you were in the wash-rooms on several occasions, is that correct? A. That's right.

Q. Do those wash-rooms have windows in them? A. Yes.

Q. Did you know any of the detectives that were there that night? A. No, only by recognizing their faces.

Q. I mean, did you hear any of their names? A. No.

Q. You say you went into Mr. Ryan's office some time after ten o'clock? A. That's correct.

Q. Well, now, could you fix that time better? Would it be five after ten or eleven or twelve o'clock? A. I couldn't.

Q. So that it could be eleven o'clock possibly? A. Possibly.

Q. Or twelve? A. No; definitely not.

Q. Because you had left at twelve? A. Well, if I hadn't gone I was on my way.

Q. So that your best estimate of the time that 2078
you visited Mr. Ryan is somewhere between ten and twelve? A. Well, I wouldn't put it so close to twelve. I will say between ten and eleven-thirty.

Q. Did you have a supper period that night? A. Yes.

Q. What was your supper hour? A. Eight o'clock.

Q. From eight until what? A. Eight-thirty.

Q. Do you leave the building during your supper hour? A. No.

Q. Do you leave the floor? A. No.

Q. Do you use one of the offices there? A. No.

Q. Were you in the north wing or the south wing during your supper hour? A. I was in the 2079
waiting room, in the reception room.

Q. That's between the north wing and the south wing? A. That's right.

Q. Now, after supper, at eight-thirty, from eight-thirty until about eleven-thirty, did you spend that time in the north wing or the south wing? A. I spent it in both wings; part of the time was spent in both wings.

Q. Were there people in the south wing that night? A. Yes; I think so.

Q. What were they, detectives? A. I wouldn't know for sure, but I think at least it was occupied for a while.

Q. Were there some people kept in the hall there for a while, did you note, in the corridors on the north wing? A. What do you mean?

Q. Some people standing there? A. Only the detectives.

Q. Do you know Mr. Shaw? A. No.

Q. The proprietor of this store? A. No.

2081 Q. Did you ever see George Moore standing in the corridor? A. No.

Q. Now, some time between ten and eleven-thirty you went into Mr. Ryan's office? A. That's right.

Q. Did Mr. Ryan ask you to come in? A. Yes, he did.

Q. Where were you when he asked you? A. I was in the reception room.

Q. Did he call you on the 'phone? A. No.

Q. Did he come out? A. Yes.

Q. And asked you to come in? A. Yes.

Q. And then you went in, and how long were you in his office? A. I would say, roughly, about ten or twelve minutes, maybe fifteen minutes.

2082 Q. And you cleaned up what you observed there, is that correct? A. Yes.

Q. How many people were in Mr. Ryan's office at that time? A. Oh, there appeared to be about a half dozen. I didn't take time to count.

Q. But you did look to see whether George Moore was there, is that right? A. I didn't look to see him.

Q. I mean, did you see him? A. Yes, I did.

Q. Who else was there? There was only a half dozen. A. I only know that there were half a dozen people. I don't know who they were.

Q. Out of the half dozen, are you able to pick out more people than George Moore? A. Well, I had a little incident about him.

Mr. Wilkinson: That's objected to as not responsive. I move to strike it out.

The Court: Sustained. Strike it out.

Q. Are you able to pick out any one of the half dozen persons?

2084

Mr. Foley: Now, I object. That has been answered.

The Court: He may answer it. Overruled.

Q. Are you able to pick out any of the persons, of the half dozen persons who were in Mr. Ryan's office, other than George Moore? A. I don't know their names.

Mr. Wilkinson: No further questions.

Redirect examination by Mr. Foley.

Q. On that night were you the only colored man assigned to clean there? A. That's right. 2085

Q. Did anyone ever chase you out of a bathroom? A. No.

Mr. Foley: That's all.

The Court: Step down. Next witness.

(Witness excused.)

JAMES HOLT, recalled to the witness stand in behalf of the People, further testifies in rebuttal as follows:

Direct examination by Mr. Foley.

Q. Did you ever strike the defendant Moore? A. No, I did not.

Q. Did you ever kick him? A. No, I did not.

Q. Did you ever knock him unconscious? A. No, I did not.

Q. Did you see anybody else hit or kick him? A. No, I did not.

2087

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Q. If you saw it would you say it? A. Yes, I would say it.

Q. Did you ever see a police officer or a detective hit a prisoner? A. No, I have not.

Q. And how long have you been in the Police Department? A. Ten and a half years.

The Court: What is the matter, gentlemen?

2088 Mr. Wilkinson: I will object to Mr. Foley staring at me while interrogating. I don't think it should be permitted.

Mr. Foley: I feel that if there is anything occurring which I might properly object to, as an attorney, I should be able to accurately describe it to the Court.

The Court: Direct your attention to me if you have anything to say.

Mr. Foley: Thank you.

The Court: And it might be well for you to conduct your examination without a smirk on your face. Proceed.

Mr. Wilkinson: If there is a smirk, as the Court has characterized it, it is certainly not intentional.

The Court: Very well; proceed.

Q. You have been a police officer for ten years? A. Ten and a half years.

Q. You have worked the Bronx, how long? A. I have worked in the Bronx about eight years.

Q. You were in a room alone with George 2090
Moore that night, were you? A. No, I was not.

Q. Who was in the room with you? A. With George Moore?

Q. With you and George Moore?

Mr. Foley: May we have the time fixed? This covers quite a period.

Mr. Wilkinson: Any time.

The Court: Overruled.

A. I was never in the room with George Moore alone.

Q. Were you in a room on the 6-M floor with George Moore and other detectives? A. The only 2091
time I was in the room——

Mr. Wilkinson: No. Just a minute, officer.

The Court: I will permit him to answer it? Answer?

A. Yes.

Mr. Wilkinson: I respectfully except. The answer is not responsive to the question, and I ask the Court to direct the witness to answer the question.

Mr. Foley: The witness has answered.

The Court: Repeat the question, and let us have the answer.

(The Court Reporter repeats the pending question as follows: "Q. Were you in a room on the 6-M floor with George Moore and other detectives?")

Mr. Wilkinson: Now, that can be answered
2093 by a yes or no.

The Court: Now, what is the answer?

(The Court Reporter repeats the answer as follows: "A. Yes.")

Q. You were? A. Yes, I was.

Q. And isn't it true that you struck George Moore that night, February 7th? A. No, I did not.

Q. Isn't it true that when he was down on the floor you kicked him? A. No, I did not.

Q. Did you see any other detectives kick him? A. No, I did not.

Q. Did you see any other detectives strike him? A. No, I did not.

2094

Mr. Wilkinson: No further questions.

Mr. Foley: That's all. Thank you.

(Witness excused.)

JOHN REIDY, Shield No. 1713, Detective, assigned to the 11th Detective District, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, testifies in rebuttal as follows:

Direct examination by Mr. Foley.

Q. Are you one of the officers who went to arrest Haughton? A. I am, sir.

Q. Did you hit him on the head with a gun? A. No, sir.

Q. Did you see anybody else hit him on the head with a gun? A. No, sir. 2096

Q. Did you hit him in the stomach with a gun? A. No, sir.

Q. Did you see anybody else do it? A. No, sir.

Mr. Foley: He is your witness.

Cross-examination by Mr. McDonough.

Q. Officer, did you arrive at Haughton's house prior to Detective Tracy and the policewoman? A. I did.

Q. And how long had you been there before they arrived? A. Oh, approximately, about five minutes.

Q. How many other officers were there with you prior to the arrival of Detective Tracy and the policewoman? A. At the time I arrived, I arrived in company with Detectives Shields and Curley of the 48th Squad. 2097

Q. You arrived there before Detective Tracy and the policewoman? A. Yes, sir.

Q. Now, did you go into that apartment before Detective Tracy and the policewoman arrived? A. I did.

Q. And you were accompanied by Detective Shields and Detective Curley at that time? A. That's right.

Q. Now, when you entered the apartment did you have your gun drawn? A. I did.

Q. And did the other two officers have their guns drawn? A. I can only say about Detective Shields. He had his gun drawn. Curley I didn't see.

2099 Q. So that you know that you had your gun drawn and Detective Shields had his gun drawn? A. That's right.

Q. When you went into the apartment who did you see? A. After I entered the apartment I seen Mr. Haughton. Now, that's the father I speak of.

Q. And was Lester there? A. No, he was out in the hall.

Q. Out in the hall? A. That's right, with Detective Shields.

Mr. McDonough: That's all.

Mr. Foley: That's all. Thank you.

(Witness excused.)

2100

KENNETH A. SHIELDS, Detective, Shield No. 1182, 48th Squad, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, testifies in rebuttal as follows:

Direct examination by Mr. Foley.

Q. Shields, were you one of the group that was sent over to pick up the defendant Haughton? A. I was.

Q. Did you hit him on the head with a gun? A. No, sir.

Q. Did you hit him in the stomach with a gun? 2102
A. No, sir.

Q. Did you see anybody else do it? A. No, sir.

Mr. Foley: He is your witness.

Cross-examination by Mr. McDonough.

Q. Detective Shields, were you at Haughton's home before Detective Tracy and the policewoman came there? A. Yes, sir.

Q. How long had you been there before they arrived? A. About five minutes.

Q. When you entered the apartment that Haughton lived in, did you have your gun drawn? 2103
A. I did.

Q. And who else had their guns drawn? A. Detective Curley, Detective Reidy.

Q. So that you three were there first, is that right? A. That's right.

Q. And you all went in with your guns drawn? A. We didn't go in with the guns drawn.

Q. What did you do? A. I rang the bell. When I heard the 'phone ring, I heard a woman call

for Raymond. I rang the bell, hollered, "Western Union." Raymond opened the door. I grabbed him out into the hallway, held him and held the gun to him. The other two officers put their guns back in their holsters, took Raymond inside to his room, shut the door. I told him to sit on the bed and don't move his hands.

Q. But when you took Lester out into the hallway the other two officers went inside? A. No. One officer went in to answer the telephone.

Q. And you remained outside with Lester
2105 Haughton? A. No; we followed him right in. As he went into the telephone we went to the left, into the room.

Q. Were you alone with Haughton at any time? A. No, sir.

Q. There was always someone with you? A. At one time there were three, and then on another occasion there were five of us, four detectives and one policewoman.

Mr. McDonough: That's all.
Mr. Foley: That's all. Thank you.
(Witness excused.)

2106 JAMES T. CURLEY, Detective, Shield No. 1852, 48th Squad, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, testifies in rebuttal as follows:

Direct examination by Mr. Foley.

Q. Curley, were you one of the officers sent to bring in Haughton? A. I was.

Q. Did you hit him on the head with a gun? A. No, sir; I did not.

Q. Did you hit him in the stomach with a gun? A. No, sir; I did not.

Q. Did you see anybody else do either of those things? A. No, sir, I did not.

Mr. Foley: That's all.

Cross-examination by Mr. Fleischman.

Q. Would you admit it if you hit him on the head with a gun? A. Beg pardon?

Q. Would you admit it if you hit him on the 2108
head with a gun? A. Yes, I would.

Q. Did you ever see any officers strike anybody, any prisoner? A. No, I never did.

Q. You never heard of any officer striking a prisoner? A. Oh, yes; plenty of times.

Q. Were you the first one there that night? A. Where?

Q. At Haughton's house? A. No, I was not.

Q. Who was the first one there? A. Detective Shields.

Q. And who else was there besides Detective Shields? A. Detective Reidy.

Q. Did you grab Haughton and pull him out into the hall? A. No, I did not. 2109

Q. Isn't it a fact that you struck him on the side of the head with a revolver? A. No, it is not.

Q. Where did you go after you spoke to him out in the hall? A. Into the apartment.

Q. Did you go into the apartment with him? A. Yes.

Q. Was your revolver drawn? A. No, it was not.

Q. Did any of the other officers have their guns drawn? A. Yes, they did.

Q. Who had their guns drawn? A. Detective Shields had his gun drawn.

Q. And who else went in with him into the apartment? A. Detective Reidy.

Q. And where did you take him when you went into the apartment? A. Into his room.

Q. Was he attired when he was in his room? A. When we first brought him in he was in his pajamas.

Q. Were you with him during all the time he
2111 was in the room? A. Yes, I was.

Q. Didn't you strike him on the head with a revolver when you had him in the room? A. No, I did not.

Q. Did you question him about the stealing of an automobile while you had him in there? A. No, I did not.

Q. Did you ask him whether he had stolen a car? A. No, I did not.

Q. No mention was made about a stolen car that night? A. By me?

Q. By any of the other officers? A. I don't know.

Q. Were you present at all the times that Curley or Reidy were talking to him? A. No,
2112 I was not. My name is Curley.

Q. Detectives Reidy and Shields. Were you there at all times that Detectives Reidy and Shields were talking to him? A. I was in the room; yes.

Q. Did you say to him, "You black, s. o. b., I would like to put a bullet through you?" A. Black what?

Q. "Black s. o. b."? A. No, I did not.

Q. Did you leave the apartment with Haughton that night? A. I did.

Q. To go downstairs? A. I did.

Q. When you got him downstairs, did you tell him "Run; I want to put a bullet through you"? A. No, I did not.

Q. Did either Shields or Reidy make that statement to him? A. No, they did not.

Q. Did you get into an automobile? A. Yes, I did.

Q. Where were you sitting in the automobile? A. On the right hand of the prisoner.

Q. Who was on his left hand? A. Detective 2114
Reidy.

Q. Did the automobile stop at any time on its way to the District Attorney's office? A. Yes, it did.

Q. Did anybody get out of the car when it stopped? A. Yes, they did.

Q. Who did? A. Detective Shields.

Q. Who else got out? A. No one that I remember.

Q. Who else was in the car besides you, Detective Shields and Detective Reidy? A. Detective Tracy and a policewoman.

Q. And Detective Shields was the only one who got out of the car? A. The only one that I remember leaving the car. 2115

Q. You remained in the car with the prisoner? A. Yes, I did.

Q. Isn't it a fact that you hit him in the stomach with a gun at that point and said to him, "If you don't cooperate with the District Attorney's office we will get you down in the basement later"? A. No, it is not.

Q. Isn't it a fact that you said to him at that point, "You are a cop-killer, and I would like to put a slug into you; run"? A. No, it is not.

Q. How long have you been on the police force? A. Eight years and seven months.

Mr. Fleischman: That's all.

Mr. Foley: Thank you.

(Witness excused.)

The Court (to Jury): Step upstairs for a few minutes.

2117

(After Short Recess.)

John A. Tracy, Detective, Shield No. 892, 11th Detective Cruiser, Radio Motor Patrol, Police Department, City of New York, called as a witness in behalf of the People, being first duly sworn, testifies in rebuttal as follows:

Direct examination by Mr. Foley.

Q. Officer Tracy, are you one of the group that went to apprehend the defendant Haughton on the morning of February 8th? A. I was.

2118 Q. Did you strike him on the head or in the stomach with a gun? A. No, sir.

Q. Did you see anybody else do it? A. No, sir.

Q. Are you familiar with the operation of a .45 automatic? A. I am, sir.

Q. Can there be six shells in the clip and one in the barrel? A. There can.

Q. And if you extract the clip with the six in will the one still remain in the barrel? A. One will remain.

Mr. Foley: Thank you. Your witness.

Cross-examination by Mr. Fleischman.

Q. Detective Tracy, how long have you been on the police force? A. I will be in the Department ten years the first of next month.

Q. What time of the night on December 8th did you see the defendant Haughton?

2120

Mr. Foley: I object to it, if Your Honor please. There is no testimony concerning the night of December 8th.

Mr. Fleischman: February 7th.

A. The first time I saw Haughton was some time after one o'clock on the morning of the 8th. I hadn't seen him prior to that.

Q. Where did you see him for the first time? A. Well, I saw him in his bedroom at premises 741 Jennings Street.

Q. Who else was there besides yourself? A. There were three other detectives and Policewoman Ellis.

2121

Q. Were they all in the bedroom? A. Yes; when I arrived there; all but Policewoman Ellis. She followed me.

Q. Were you the driver of the car? A. From the scene; yes, sir, I was.

Q. When you came into the bedroom, did the detectives have their guns drawn? A. No, sir, they didn't.

Q. Shields didn't have his gun drawn? A. I couldn't say. I didn't notice whether he had.

Q. You couldn't notice whether Curley had his gun drawn either? A. I don't believe he did; no, sir.

Q. You couldn't say definitely whether he did or didn't? A. No, I could not.

Q. How about Reidy? Didn't he have his gun drawn? A. I couldn't say, sir.

Q. Did you remain in the bedroom during all the time that the defendant was getting dressed? A. I did.

2123 Q. Isn't it a fact that you saw Detective Curley strike the defendant Haughton with a gun? A. I did not.

Q. If you had seen him strike him, would you tell us? A. I would.

Q. You wouldn't cover up for him, would you? A. Definitely not.

Q. Did you hear Detective Curley or any of the other detectives question him about a stolen automobile? A. That was the subject of the discussion when I was in the room with them; yes.

Q. If I were to tell you that Detective Curley said that there was no discussion about a stolen automobile, would you say that he wasn't telling the truth?

2124

Mr. Foley: I object, if Your Honor please.

The Court: Objection sustained. I will permit a proper question.

Q. Did you hear Detective Curley say to Lester Haughton, "I would like to put a bullet in you"? A. No, sir; I did not.

Q. How long were you in the apartment? A. Well, Mrs. Ellis and I arrived there, I would say, about twelve minutes, maybe fourteen minutes after one, and we had remained there, I will say, till about twenty minutes after.

Q. And then you all went downstairs, is that correct? A. Yes, sir.

Q. You got into the car? A. Yes, sir.

Q. Did you drive the car? A. I did.

Q. And then you proceeded to the District Attorney's office? A. Yes, sir.

Q. Were there any interruptions on the way to the D. A.'s office? A. We had an interruption 2126
at the intersection of Prospect Avenue and Boston Road. The car had stalled.

Q. And you got out of the car? A. I did.

Q. Who else got out with you? A. Shields got out first. Detective Shields got out first, and he intercepted a driver and he attempted to push us.

Q. And then you got out? A. Then Shields got back in the car and I got out and made a request of the bus driver to give us a push.

Q. Who else was outside the car while you were out? A. I do not know. I think just Shields and I were probably the only ones that got out of the car.

Q. Was the lady detective outside the car, too? 2127
A. No; she was in between us in the front seat.

Q. She at no time left the car? A. I don't think so, counsellor.

Q. You are not definite about it, are you? A. I am pretty sure. I would say no, she didn't get out of the car.

Q. How long a period of time were you out of the car? A. Oh, maybe a half a minute or so, just to leave the car and approach the bus driver and identify myself and made a request for a push.

Q. Detective Curley was in the back of the car with the defendant Lester Haughton, wasn't he? A. Yes, sir; he was.

Q. He at no time left the car, did he? A. On that trip, no, sir.

Mr. Fleischman: No further questions.
Mr. Foley: That's all. Thank you.
(Witness excused.)

THOMAS M. FARRELL, a witness in behalf of The People in rebuttal, having been first duly sworn, stated that he was a detective in the Police Department of the City of New York, shield 332, assigned to the 41st Squad, and testified as follows:

Direct examination by Mr. Foley.

Q. Detective Farrell, did you ever strike the defendant Moore? A. No, sir.

Q. Did you ever kick him? A. No, sir.

Q. Did you see anybody else strike or kick him? A. Nobody put a hand on him.

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Q. Did you ever see him before in a place other than this courtroom? A. I saw him the night he was apprehended.

Q. What night was that? A. February 7th, 1947.

Q. Did you apprehend him? A. No, sir.

Mr. Foley: I think it is intended to be forty-six, your Honor.

The Court: No.

Mr. Foley: I beg your pardon; I am sorry.

Q. Did you apprehend him? A. No, sir.

Q. Where did you see him? A. Mr. Ryan's office.

Q. What time was that? A. I think I first saw him about three or four o'clock, maybe a little later.

2132

Q. Well now, you first saw him about three or four o'clock? A. It was later than that.

Q. Fix the time now. A. I will say about five thirty.

Q. About five thirty? A. Yes, sir.

Q. And where did you see him? A. Sitting at Mr. Ryan's desk.

Q. Where were you? A. Walking in and out.

Q. In and out of Mr. Ryan's office? A. Yes, sir.

Q. Were you alone at the time? A. Well, there were numerous men around. There were about two or three Assistant District Attorneys, Mr. Ryan was seated at his desk, a couple of more detectives.

2133

Q. How many more detectives? A. Well, there was Detective Foden.

Q. Who? A. Detective Foden and I don't recall any City detectives besides him. There were a few county detectives around.

Q. Who were the county detetcives? A. I don't know them by name, Counsellor.

Q. Are you acquainted with any of them? A. Well, I have seen them around in various cases.

Q. How many county detectives would you say were there? A. Maybe four.

Q. And Detective Foden and yourself? A. Yes, sir.

Q. Any other City detectives? A. Not that I recall.

Q. You say you were going in and out of Mr. Ryan's office? A. We had various chores to do.

Q. Which called for you going in and out of Mr. Ryan's office? A. That's right.

2135 Q. Well, were you seated there about five thirty in Mr. Ryan's office when Mr. Ryan was questioning George Moore? A. I am not so sure about th time, but I wasn't seated there at all when he was questioned.

Q. Were you standing there while he was questioning? A. I wasn't in the room.

Q. You weren't in the room while he was questioning? A. No, sir.

Q. Do you know what time he was questioning? A. No, sir. During the night some time later on.

Q. Well now, how long were you in the county building that night? A. That night?

Q. Yes, February 7th, 1947. A. I was in there about twenty-one hours.

2136 Q. And of that twenty-one hours that you spent in The Bronx County Building, how many hours did you spend on 6-M floor? A. I can't approximate. I made about at least ten trips to Harlem and went on various errands that I was dispatched on and I don't know how many minutes or how many hours I was in the building.

Q. Were those trips to Harlem before five thirty or after five thirty? A. After.

Q. What time did you leave the county building the following morning? A. About six a. m.

Q. So you got there about five thirty, is that correct? A. p. m.?

Q. P. m., the night before. A. I got there at nine thirty a. m. the day before.

Q. Now, did you ever take George Moore from Mr. Ryan's office into another office on the 6-M floor? A. No, sir.

Q. Did you ever take George Moore from Mr. Ryan's office, out of Mr. Ryan's office to any place? A. No, sir. He wasn't in my custody.

Q. Who told you to say that? A. Nobody. 2138

Q. Whose custody was he in? A. County detectives. He was a prisoner from the Tombs.

Q. Anybody tell you to say that? A. What do you mean, tell me to say it?

Q. Do you understand my question? A. No, nobody told me to say it.

Q. Oh, you understand it? A. Yes.

Q. Now, before you took the stand here today did you talk to anybody about what you were going to testify to? A. No, sir.

Q. You didn't talk to Mr. Foley? A. No, sir.

Q. Or Mr. Delagi? A. No, sir.

Q. And nobody told you why you were being recalled as a witness in this case? A. This is my first time on the stand. 2139

Q. This is your first time on the stand?

The Court: He is not recalled.

Q. I stand corrected then. This is your first time on the stand? A. Yes, sir.

Q. And no one told you or asked you about your testimony? A. No, sir.

Q. Do you know a man by the name of John Starnes? A. I assisted in arresting him.

Q. Officer, I asked you, do you know a man by the name of John Starnes? A. Yes, sir.

Q. How long have you known John Starnes? A. I saw him first on December 15th, 1946.

Q. And were you with Detective Foden when you saw him? A. No. I saw him sitting in the Seventh Detective District office at 159th Street and Third Avenue.

Q. Was Detective Foden with you? A. He was around the building some place, but he wasn't
2141 with me.

Q. Well, at any time that evening was Detective Foden with you and one John Starnes? A. No.

Q. After December 15th were you at any time ever with Detective Foden and one John Starnes? A. Yes, sir, numerous times.

Q. And while you were with John Starnes were you questioning John Starnes in connection with this particular case? A. Yes, he was questioned along with a lot of others.

Q. And did you also question one Arthur Moore? A. Yes, sir.

Mr. Foley: Well, now, I will object, if your
2142 Honor pleases. This is a collateral matter.

The Court: What is the purpose of this?

Mr. Wilkinson: In connection with the defendant's defense that his confession is involuntary.

The Court: Objection sustained.

Mr. Wilkinson: I respectfully except to the Court's ruling and ask permission of the Court to pursue my line of questioning with this witness.

The Court: You may not.

Mr. Wilkinson: In view of the Court's ruling, I take exception and there will be no further questions.

Mr. Foley: Thank you.

(Witness excused.)

WALTER G. FODEN, detective, recalled for further examination in rebuttal, testified as follows:

Direct examination by Mr. Foley.

2144

Q. Did you ever strike the defendant MOORE? A. I did not.

Q. Did you ever kick him? A. I did not.

Q. Did you ever see anybody strike or kick him? A. No, sir, I did not.

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Q. Detective Foden, did you discuss this testimony with anybody before you took the stand here? A. No, sir.

Q. Did you talk it over with Mr. Foley? A. Not today. 2145

Q. At any time? A. Prior to my previous time on the stand I did.

Q. But since your previous time on the stand did you discuss it with him? A. I did not.

Q. Any of his staff? A. No, sir.

Q. Who told you to come back here as a witness? A. I was told to stay here.

Q. Did anybody advise you that you were going to be recalled as a witness?

Mr. Foley: If you please. If your Honor please, this witness was requested to remain here. The defense took some of his D.D.5s and we have held him since that time.

The Court: It is immaterial. He is here as a witness. Proceed.

Q. Did anyone tell you that you would be recalled? A. No, sir.

Q. When did you see George Moore for the
2147 first time? A. In Mr. Ryan's office about the hour of six or six thirty p. m. on the date of his arrest.

Q. Were there any other detectives in the room at the time? A. Detective Green, Detective Holt.

Q. Any other detectives? A. Not that I recollect at this time.

Q. Did you ever take George Moore from Mr. Ryan's office to any other room? A. No, sir, I did not.

Q. How long were you in Mr. Ryan's office that night? A. I was in and out of the office numerous times that night.

Q. How long did you remain in his office at any time? A. Maybe fifteen or twenty minutes at
2148 different times.

Q. Did you ever take George Moore to the room adjoining Mr. Ryan's room? A. No, sir, I did not.

Q. And in that room did you punch and kick George Moore? A. I did not.

Q. Did you, Detective Foden, ever take George Moore from Mr. Ryan's office to the wash room? A. No, sir, I did not.

Q. And did you in the wash room draw your revolver and tell him to attempt to get out the window and you would plug him? A. No, sir.

Q. Did you have a revolver on you that night? A. Yes, sir.

Q. Do you beat prisoners? A. No, sir.

Q. Do you know one John Starnes? A. I do.

Q. Was John Starnes arrested by you? A. He was.

Mr. Foley: I object, if your Honor pleases. It is incompetent, irrelevant and immaterial.

The Court: Overruled.

2150

Q. And was John Starnes questioned by you in connection with this case? A. He was.

Q. Do you know one Eddie Moore? A. I do.

Q. Or Arthur Moore?

Mr. Foley: I object, if your Honor pleases.

The Court: Overruled.

Mr. Foley: For the same reason.

Q. And was one Arthur Moore questioned in connection with this case? A. He was.

Q. Did you question John Starnes about Arthur Moore's committing this crime?

Mr. Foley: I object, the same reasons. 2151

The Court: Overruled.

A. I did.

Q. Did you beat John Starnes? A. No, sir, I did not.

Q. Did you at any time after December 13th strike and beat one John Starnes in an attempt

to get a confession from him to solve this crime? A. I did not.

Q. Did you take one John Starnes on various tours of The Bronx in your automobile? A. No, sir.

Q. Did you take him to a bar and grill in The Bronx? A. No, sir.

Q. Did you at any time feed him intoxicating liquors? A. No, sir.

Q. Did you beat John Starnes and attempt to get him to implicate Arthur Moore in this crime?

2153 Mr. Foley: I again object, if your Honor pleases, for the reasons that have been set forth before. This is incompetent, irrelevant and immaterial and it is a collateral matter.

The Court: Overruled. He will be bound by the answers of the witness.

A. I did not.

Q. On each occasion that you were with John Starnes, was Detective Farrell with you? A. No, sir.

Q. On how many occasions that you were with John Starnes was Detective Farrell with you? A. About three times.

2154 Q. Did you at any time have John Starnes in an automobile? A. Yes, sir.

Q. How many occasions? A. Once.

Mr. Wilkinson: No further questions.

(Witness excused.)

The Court: If you wish to call Mr. Farrell for that line of questioning, I will have him back for you, Mr. Wilkinson. He is avail-

able. I will call him back if you want to ask him along those lines you just asked Foden.

Mr. Wilkinson: I would like to ask him.

The Court: Bring back Farrell, just for those few particular questions.

THOMAS M. FARRELL, witness for The People, recalled for further examination, testified as follows:

Cross-examination by Mr. Wilkinson. 2156

Q. Detective Farrell, you were seated in the courtroom while I was questioning Detective Foden, were you not?

Mr. Foley: He has a perfect right to be here after testifying.

The Court: That is perfectly proper.

Mr. Wilkinson: I have a perfect right to ask the question, Judge.

Mr. Foley: The Jury observed him come up from the body of the courtroom.

The Court: He wasn't directed to go out.

Mr. Wilkinson: There certainly is no harm. It is a fact he was seated here. 2157

The Court: It is conceded then. It is on the record. It is conceded now. Proceed.

Q. And you heard Detective Foden testify, did you not? A. Yes, sir.

Q. If I were to ask you the questions that I asked Detective Foden, would you make the same answers?

2158

Mr. Foley: I object to that.

The Court: He may answer that.

A. Yes, sir.

Q. He was your partner then, was he? A. Yes, sir.

Mr. Wilkinson: No further questions.

The Court: That is all. Step down.

(Witness excused.)

2159

SYLVESTER RYAN, witness for The People, recalled for further examination in rebuttal, testified as follows:

Direct examination by Mr. Foley.

Q. Mr. Ryan, you were a witness here before? A. I was.

Q. Can you tell what time on the night of February 7th I first came to your office in this building? A. I can fix the time in point of the time that the statement of Moore was commenced. I would say it was around nine o'clock. It was while I was taking Moore's first statement.

2160

Q. Did I come to your office in response to a telephone call? A. Yes. I called you at your home.

Q. At what time? A. It was before I started Moore's first statement with Salmore. I would say it was around quarter after eight, maybe eight o'clock, maybe a little later.

Q. Now I want to direct your attention to that period of time between the taking of Moore's first

statement and the beginning of the taking of his second statement. He remained in your office during that time? A. Yes, I think he was there that entire time. He might have gone out once or twice, but I don't think so. I think he remained right by me desk.

Q. Well, between the time he finished his first statement and the time he began his second, did you kick him in the chest and knock him over backwards? A. I did not. I never kicked the man or any other defendant.

2162

Mr. Foley: Your witness, Gentlemen.
Mr. Wilkinson: No questions.
Mr. Foley: Thank you.
(Witness excused.)

Richard Synder, a witness in behalf of The People in rebuttal, having been first duly sworn, stated that he resided at 530 West 166th Street, Manhattan, and testified as follows:

Direct examination by Mr. Foley.

Q. Mr. Snyder, by whom are you employed? 2163
A. Daily Mirror.

Q. How long have you been with them? A. About seven and a half years.

Q. On the night of February 7th did your regular assignment bring you to Bronx County? A. Yes.

Q. Were you in this building, carrying out that assignment? A. That's right.

Q. On what floor? A. 6-M upstairs. It is upstairs one flight.

Q. What time did you arrive here? A. I guess I got here between seven thirty and eight.

Q. On the evening of February 7th? A. That's right.

Q. What time did you leave here? A. I left here, I guess between three thirty and four o'clock. It may have been a little after four. I was waiting for the photographer to get done making pictures.

Q. Three thirty to four the next morning? A. Yes.

2165

Q. That would be February 8th? A. Yes.

Q. Were there other newspaper men with you? A. Oh, yes; there was a Tribune reporter, an A.P. reporter and a Times reporter.

Q. Where did you spend your time on 6-M? A. Well, I was walking up and down in the corridor past a room on the end. The corridor was lined with men. There were a lot of people there. There were forty, thirty or forty, and I would walk back and forth and walk in and sit down and get up and walk back and forth again.

Q. Were you restrained in any way? A. Absolutely not.

Q. Were the other newspaper men restrained 2166 in any way? A. Absolutely not, not at all.

Q. Did you before you went home have a conversation with the defendants Moore and Haughton? A. Yes. I was in while their pictures were being taken and they even changed places, so that the photographer could get a better shot of them and after having tea and cake and crackers.

Q. Were they smoking? A. Yes, they were smoking.

Q. Did they pose for pictures while you were there? A. Oh, absolutely.

Q. Willingly? A. Absolutely.

Q. Nobody threatened them? A. Threatened them?

Q. Well,— A. I even said——

Mr. Wilkinson: I object to this as not responsive. The question can be answered yes or no.

Q. They weren't threatened, were they? A. Absolutely not.

Q. You saw their photograph taken? A. Yes. 2168

Mr. Foley: Your witness.

Cross-examination by Mr. Wilkinson.

Q. They were taking tea and cake, were they? A. Yes.

Q. And you were taking pictures, were you? A. No, I wasn't. The photographer was.

Q. The photographer was? A. Yes.

Q. You are not a photographer, are you? A. No.

Q. And where was this place where they were having tea and cake and their pictures taken? A. The desk in the office. 2169

Q. And you saw them willingly and voluntarily pose for pictures? A. Absolutely.

Q. Your are definitely sure of that, are you? A. Absolutely.

Q. What time were the pictures taken? A. Well, I didn't look at a clock as I went into the office.

Q. Just a minute. A. I will tell you approximately.

Mr. Wilkinson: If the Court pleases, the answer is not responsive. I move to strike it out.

The Witness: I will tell you approximately. It was about, I would say it was around three o'clock, somewhere around then.

Q. A. m. or p. m.? A. m.

Q. On the morning of February 8th? A. That's right.

2171 Q. And when they were having their pictures taken, is that the time that they were having cake and tea? A. That's right. They stopped to pose for the pictures.

Q. And this was after all the confessions had been taken? A. Yes.

Q. What time did you get to the county building? A. Between seven thirty and eight o'clock.

Q. Can you fix the time any better than that? A. Well, it was a Friday night and we usually have a card game up in the reporters' room downtown.

Mr. Wilkinson: Not responsive; I move to
2172 strike it about their card games.

The Court: He is trying to fix the time.

The Witness: I am trying to fix the time. I don't look at a clock every time I turn around. I want to try to fix the time as best I can.

The Court: Fix it in your own mind and tell us.

Mr. Wilkinson: I move to strike it out.

The Court: Denied.

Mr. Wilkinson: Exception.

The Witness: Well, I said to Joe——

Mr. Wilkinson: I move to strike it out.

The Court: Fix the time.

The Witness: I am just trying to fix the time for you.

The Court: You think in your own mind what you said to Joe and then tell us the time.

The Witness: I told him the time, between seven thirty and eight o'clock.

Q. Are you regularly assigned to the county building? A. Yes, sir, I am in The Bronx. 2174

Q. And what is that, a night reporter? A. Yes. We covered all The Bronx and the West Side.

Q. And do you come to the county building often? A. I come whenever there is a case.

Q. Are you acquainted with any members of the District Attorney's staff? A. No, I am not.

Q. You don't know any of them? How long have you been working in the county building? A. I don't work the county building. I work The Bronx and the West Side.

Q. Have you ever been to the District Attorney's office before February 7th? A. The first time. 2175

Q. The first time? A. Yes.

Q. How long have you been on the Daily Mirror? A. Seven and a half years.

Q. And you had never been to The Bronx District Attorney's office before that night? A. No, because I wasn't working up in The Bronx all that time. I have been in on the desk.

Q. You heard the question, did you not? A. Yes.

Mr. Foley: I submit it has been answered.
The Court: Proceed.

Q. Were there other reporters there? A. Yes.
Q. Who asked you to take the stand and testify in this case? A. Well, as I said——
Q. Do you understand the question? A. No one asked me, no one at all. I just want to tell you how come I took the stand.
Q. Before you took the stand did you speak to
2177 anybody about your testimony here? A. Yes, I did.
Q. To whom? A. The District Attorney.
Q. Do you know his name? A. Mr. Foley.
Q. How many times did you talk to him about your testimony? A. Once.
Q. When was that? A. Yesterday.
Q. When you arrived on floor 6-M did you go to Mr. Ryan's office immediately? A. No.
Q. Well, what time would you say you arrived at Mr. Ryan's office? A. Perhaps a quarter after eight. It may have been eight o'clock. It might have been quarter after.
Q. Did you walk into Mr. Ryan's office? A. No.
2178 I walked past it.
Q. Well, you got there approximately seven thirty or quarter to eight, is that correct? A. Yes, around that time.
Q. Did you go directly to 6-M when you arrived at the building? A. Yes.
Q. And where did you remain; is there a press room there or something? A. I don't believe there is a press room. We were in some office. It

wasn't a press room, because there was somebody's desk.

Q. Well, did you see George Moore as soon as you arrived there? A. No, not at the very minute, no.

Q. How long after you arrived there? A. I will say about twenty minutes. It might have been twenty-five. It might have been fifteen.

Q. Twenty or twenty-five minutes after you arrived? A. Yes.

Q. And where was he when you first saw him? A. He was seated in an office, which is about two or three offices away from where we were. I got up to take a walk to see what was doing, see where the prisoner was and I walked down and the door was open. I looked in and he was seated there. 2180

Q. Was that Mr. Ryan's office? A. I believe so.

Q. Do you know where Mr. Ryan's office is? A. I told you I am not familiar with the county building.

Q. Did you see Mr. Ryan in an office that night? A. Yes, I did.

Q. Did anybody tell you that was Mr. Ryan's office? A. No. I saw Mr. Ryan seated there later on in the evening.

Q. Did you assume that that was his office? A. No, I didn't assume anything. When you are in this business, you don't. 2181

Q. The room you saw Mr. Ryan in, is that the same room where you first saw George Moore? A. That's right.

Q. Did you know that George Moore had been brought to the county building about five thirty that night?

Mr. Foley: I object, if your Honor pleases. There is no such testimony in this record.

The Court: About.

Mr. Foley: I will withdraw the objection.

A. Well, I didn't know exactly at that time what time he had been brought to the county building. I found out later, of course, for our story.

Q. But you knew that George Moore had been brought there before you arrived? A. Yes. He was there when I arrived.

Mr. Wilkinson: No further questions.

2183

Cross-examination by Mr. McDonough.

Q. Mr. Snyder, how long have you been assigned to cover The Bronx and the West Side of Manhattan? A. I will say about five months.

Q. How long? A. About five months.

Q. Five months? A. Yes.

Q. And during the course of that five months did you have any occasion to come here to The Bronx County Building? A. Not in these past five months, no.

Q. Prior to that had you come to The Bronx County Building on any assignment? A. I am trying to think back now.

2184

Q. Yes, go ahead. I am not rushing you. A. No, I don't believe I had ever had an assignment.

Q. You don't believe you have had? A. No, I don't believe I have had.

Q. Now, where did you come from to get to this building; where were you? A. Tremont Avenue.

Q. Is there an office of your newspaper there? A. Yes.

Q. On Tremont Avenue? A. Tremont and Bathgate Avenue.

Q. And is that the police station? A. No. We have our own separate office across the street.

Q. Across the street? A. Around the corner.

Q. And when you came were you told that something big was happening? A. No, I wasn't told that something big. We all——

Q. You weren't told? A. No.

Q. As a newspaper man you interview various people about an article that you are going to write or a news report, do you not? A. Yes. 2186

Q. And when you ask people for an interview, many times you get information which you feel is in the nature of confidential information?. A. Oh, yes.

Q. Now, isn't it a policy, if you know, of newspaper men when they get information, confidential information, that they don't disclose it? A. Yes, that's right.

Q. Have you ever been called as a witness in any criminal proceedings prior to this time? A. No.

Q. Do you know other men on your newspaper that take news reports of criminal cases? A. Oh, yes, sure. 2187

Q. Do you know of any of them who have ever been called as witnesses in a criminal case? A. I don't know of any. They may have been. They may well have been for all I know.

Q. But you don't know of ny? A. No, I don't know.

Q. Were you given any promise of a y kind by anyone of any special story on this case? A. No.

Q. Did you hope that you might get some special information? A. No.

Q. Were you subpoenaed to come here to court? A. No. I came voluntarily.

Q. You came of your own voluntary accord? A. Yes.

Q. And you discussed this matter with members of the District Attorney's staff? A. Just one member.

Q. Now, you say when you first got here there were about forty men around through the building or around through the corridors of 6 M? A.
2189 Yes, around that. There may have been less; not much less.

Q. I mean, you are a reporter and you have given your opinion, about forty men. A. About forty men, but it may well have been thirty-two or thirty-three; do you see what I mean?

Q. No, I don't see what you mean. You say you are accurate in your news reports? A. Oh, just a moment.

Mr. Foley: If your Honor pleases, may we have something else?

Q. You said forty men? A. I said about forty men, but I didn't count them.

2190 Q. That is your estimate? A. That's right.

Q. And you are accustomed to making estimates of people and numbers of people that are gathered at a particular place, are you not? A. Not an exact figure, no.

Q. But an approximate figure? A. Yes, that's right.

Q. And when you say about forty you mean about forty? A. That's right, in that vicinity.

Mr. McDonough: That's all.

Redirect examination by Mr. Foley.

Q. On the night of February 7th and the early morning of February 8th did you get any confidential information from anybody, detective or District Attorney? A. No.

Q. Did all of the news—was all of the news that you got available to any reporter who was present and asked questions? A. Yes.

Mr. Wilkinson: I object to the witness being led.

The Court: Overruled.

Mr. Wilkinson: I respectfully except. 2192

Mr. Foley: That is all.

The Court: Step down.

(Witness excused.)

The Court: Any more witnesses?

Mr. Foley: We are going to return in any event at two o'clock, aren't we, your Honor?

The Court: Certainly.

Mr. Foley: I will see what I can do about some matters between then.

The Court: You are admonished by the Court not to discuss the case. Form no opinion until the matter is submitted to you by me. We will take a recess for lunch now. Will you wait for the attendants? (The Jury 2193 retires from the courtroom.)

Mr. McDonough: May I approach the bench, Judge?

The Court: Yes. (Mr. McDonough confers with the Court.)

(After lunch recess. The Jurors were called individually by name and each answered.)

VELENA ELLIS, witness for The People, recalled for further examination in rebuttal, testified as follows:

Direct examination by Mr. Foley.

Q. Were you one of the officers who went to apprehend the defendant Haughton? A. I was.

Q. Did you strike him either on the head or in the stomach with a gun? A. I did not.

Q. Did you see anybody else do it? A. No, I didn't.

2195 Mr. Foley: Thank you. That is all. Your witness.

Cross-examination by Mr. Fleischman.

Q. You were out in the hallway when Haughton was taken in the bedroom by the other detectives, is that right? A. When Haughton was taken into the bedroom?

Q. That's right. A. No, I wasn't.

Q. Where were you? A. When I arrived Haughton was in the bedroom.

Q. But you didn't go into the bedroom? A. Yes, I did.

2196 Q. How long were you in the bedroom? A. Oh, about a minute or two.

Q. How long were the officers in that bedroom? A. Oh, I would say about ten or fifteen minutes or possibly fifteen to twenty minutes.

Q. Now, when the car was stalled on Boston Road, I think you said it was. A. Somewhere in that vicinity.

Q. Did you get out of the car? A. For about a minute.

Q. Who else got out with you? A. The officer who was sitting beside me.

Q. What was his name? A. I don't know whether that was Curley or Shields; I can't say.

Q. Who else got out beside you and Shields? A. The driver.

Q. What was his name? A. It evades me at the moment.

Q. Tracy, does that refresh your recollection? A. That's right, Tracy.

Q. Officer Tracy testify that you didn't get out of the car; would that refresh your recollection as to whether you did or didn't get out of the car? 2198 A. I did get out of the car. I was probably out of the car when he was out.

Mr. Fleischman: That is all.

Mr. Foley: That is all. Thank you.

(Witness excused.)

Mr. Foley: The People rest, your Honor.

Mr. Wilkinson: The defendant George Moore rests.

Mr. Fleischman: The defendant Haugliton rests.

The Court: Do both sides rest?

Mr. Wilkinson: Both sides rest.

The Court: Motions?

Mr. Fleischman: Yes, Judge. 2199

Mr. Wilkinson: We are ready to make our motions. Will the Court have the motions made in the presence of the Jury?

The Court: Whatever you request.

(Mr. Wilkinson confers with Mr. Fleischman.)

Mr. Wilkinson: It is the request of both sides that the motions be made in the absence of the Jury.

Mr. Foley: Not both sides; both defendants.

Mr. Wilkinson: Both defendants rather.

The Court: That is natural. Step upstairs, Gentlemen. It is simply an argument addressed to the Court on a matter of law.

(The Jury retires from the courtroom.)

Mr. Wilkinson: May it please the Court, in behalf of the defendant George Moore, at this time I respectfully move to dismiss the indictment against George Moore on the grounds that The People have failed to make out a prima facie case on The People's case and on the further ground, on the whole case The People have failed to establish the guilt
2201 of this defendant beyond a reasonable doubt.

The Court: Motion denied.

Mr. Wilkinson: I respectfully except and I will ask your Honor to instruct the Jury at a future time.

The Court: The Jury doesn't hear it.

Mr. Wilkinson: They have heard the denial of the motion at the end of The People's case.

The Court: They have heard?

Mr. Wilkinson: At the end of The People's case a denial of the motion.

The Court: At that time I instructed them.

Mr. Wilkinson: Yes, and I will ask your
2202 Honor to instruct them again in your requests to charge.

The Court: All right.

Mr. Wilkinson: I respectfully except.

The Court: Except to what; to the denial of the motion?

Mr. Wilkinson: To the denial of the motion to dismiss.

The Court: All right.

Mr. Fleischman: In behalf of the defendant Lester Haughton, if your Honor pleases, I move for a directed verdict of acquittal on the ground that the evidence adduced here does not make out a prima facie case in that the only testimony in the case that possibly connects him with the commission of this crime is his own confession. I submit, your Honor, that the testimony of Haughton as to the method in which that confession was obtained from him through force, through threats and through fear, renders that confession involuntary and, as a matter of law, it should be disregarded. The only other possible testimony that links the defendant Haughton with the commission of this crime is the testimony of one Adolph Clark, who I submit to your Honor was an accomplice as a matter of law and, therefore, his testimony must be corroborated. If the confession does not stand, his testimony must fall and there must be a directed verdict of acquittal.

The Court: Motion denied.

Mr. Fleischman: Exception.

The Court: Do you want to take a recess now to give you a chance to go over your notes?

Mr. Wilkinson: Yes, we would appreciate it, Judge.

The Court: One summation this afternoon?

Mr. Wilkinson: That is correct.

The Court: How about three o'clock?

Mr. Wilkinson: That will be fine, Judge.

The Court: The Court will recess until three o'clock.

(Jury returned to the Court Room.)

The Court: You indicated that there is some concession for the record.

Mr. Foley: No, I do not think so.

The Court: All right. Mr. Wilkinson.

Mr. Wilkinson: May it please your Honor, Mr. Foreman and Gentlemen of the Jury:

Mr. Ehrman and myself have represented George Moore in this trial. I am appearing here for George Moore to refer to some of the facts in this case, which, in our opinion, we have deemed them to be important, the turning points in the case.

2207 You men have sat here since the 20th of March listening to the testimony attentively. You have given of your time; you have given of your work; you have made sacrifices from your work and your families because you have felt you are called upon to do a duty. You have been selected as jurors to try a fellow man, against whom the State have stated they want a conviction of our client, George Moore, of murder in the first degree. They have stated that they want George Moore's life.

The case is serious. There is no doubt about it. We, as counsel, have regarded it as such. We have carried the burden of a fellow man's life.

2208 George Moore is a human being. He is a colored man. But I know that there are not any prejudices in the minds of any of you jurors with reference to whether George Moore is colored, or if he were a white boy.

We examined you on that thoroughly before we accepted you as jurors. We asked you if there were any prejudices and you said by your answers that there were none. We accepted your

answers. We have felt, and now do feel, that when this case is submitted finally to you gentlemen, you will decide that George Moore is a human being, with no prejudices whatever.

George Moore is charged with killing a police officer on the night of December 13th, 1946. We asked you before you were impaneled, if the fact that the deceased was a police officer would in any way prejudice you, and you all said "no." We relied upon the truthfulness of your answers. We relied upon your statements to us. We assumed when you men took your seats as jurors, you would be guided solely by the evidence as 2210
adduced from that witness chair and solely by the law as his Honor would give it to you. That, gentlemen, is your duty. The fact that the deceased was a police officer in no way should prejudice you in the consideration of this case.

The facts in this case you have listened to. It is a word picture from the mouths of the witnesses. Some of the witnesses were colorful of character. Some of the witnesses apparently covered up for those that preceded them. Some of them apparently testified truthfully. I say, without fear of contradiction, some of them testified falsely from what I heard. I will point them out as I go along. Those that you believe, the only Credo to follow there is your own belief. 2211
You have a right to shape up the witnesses in your own mind, so to speak, and say "That fellow I will believe" or "That fellow I won't believe," or "I will believe part of it, but I won't believe the other."

What I am getting to at this point is, I am asking you jurors to use good common sense in deciding this case. You have your God given

common-sense and this is one time you men should employ it—and I know you will. You are in this case going to decide whether a fellow human being shall continue to live. That is all. You will have to decide it according to your God given common-sense, according to your business experience, according to your oaths as jurors, and according to your duty to your fellow man.

A crime occurred on December 13th, 1946. At the time there was one, Richard Shaw, in a liquor store. If anything happened in your presence, you would expect to remember the details, or
2213 some of the details. Richard Shaw, the proprietor of the store, took the stand in this case and testified.

On the night of December 13th, I was not in Ray's liquor store. Mr. Foley was not there. Mr. Shaw was there. We wanted to find out from Mr. Shaw what happened. Who came in? Mr. Shaw on the night of December 13th spoke with the first detective who arrived at the scene. There was shooting. Shaw's mind and memory were fresher on December 13th as to the facts that occurred on that day than his mind was when he testified in this court.

The first detective on the scene questioned Mr. Shaw with reference to what happened and Mr.
2214 Shaw told the detective that one of the men was "a light skinned colored man with a mustache." That, gentlemen, is important. The district attorney is going to ask you to take a man's life—the district attorney was not there; nor was I there—but the only man that was here, Mr. Shaw, says that it was "a light skinned colored man with a mustache."

I respectfully submit to you, you have observed George Moore. I do not think by any stretch of the imagination he could be termed "a light skinned colored man." But there has been a "light skinned colored man" brought into this picture. He was brought in by the district attorney himself—one Adolph Clark.

Adolph Clark testified from that witness stand. You saw there "a light skinned colored man." He testified further that on December 13th, 1946, he did have a mustache; that subsequently while in jail, knowing full well that some time in the future, he would be called into a court of law and 2216
before a jury, Mr. Clark decided to change his appearance and he cut off his mustache.

Clark, I say, is an accomplice in this case. If you are to believe Clark's testimony, if you are to believe the testimony that the district attorney would have you believe, then I say that Clark is an accomplice, and we will ask the Court to charge the jury that Adolph Clark is an accomplice, as a matter of law, on the basis of the testimony the Peolle introduced in this case.

What motive has Clark for testifying? You heard him say on the stand he was not under indictment. He felt he was guilty of some crime. Why did he change his appearance? What is his motive for testifying? Is it that Clark on 2217
the night of December 13th, 1946, was the man in Ray's liquor store? Was Clark there? Is he the "light skinned colored man" that appeared in that store on the night of December 13th?

The district attorney was satisfied that Clark was "hooked up" in this case. You heard the Chief Assistant District Attorney say, "Yes, he is guilty of some crime or other" on the basis of the evidence they put in.

What is the basis for the consideration that is shown to this accomplice, a man who is an accomplice on their very evidence? Is it in the province of the district attorney of this County or any County in these United States to come before a jury and say, "Oh, yes, there is a man who is an accomplice, but I am not going to ask you jurors to take his life. I only want you jurors to take the lives of the two other men."

No, you won't decide on the fate of Adolph Clark. He is "the fair haired boy of the district attorney's office." They have admitted he is a
2219 criminal. They have admitted that he is involved in this very case. Yet they say, "You men will never decide his fate; that man, Adolph Clark, will live, but I come before you and I want you men to take the lives of two others." That is what the district attorney is telling you in this case.

Where does the district attorney get his right to so decide in this case? Under what law is he operating when he can say, "There are three accomplices in the murder, but don't touch my fair haired boy, Adolph Clark. I won't let you touch him because I won't even indict him"? That has been done in this case, assuming their evidence to be true.

2220 Gentlemen, you men are residents of this County. Whichever way you decide this case, you are not accountable to anybody. You are the supreme judges of the questions of fact. You can take the challenge from the district attorney if you want to and say to him, "That is the way we want our law administered; the way you are acting is what we call the true administration of justice; we will not punish your fair haired boy.

but we will take two other lives just because you want it that way."

If you gentlemen decide the case that way, we have no quarrel with you. When I have finished this summation, that is the last word you will hear in behalf of my client, George Moore. I am talking to you as George's representative. I am talking to you as fellow citizens of this community in the interests of a human being, in the interests of the true administration of justice in this County.

What you will decide as to the future of Adolph Clark is immaterial because you men cannot decide his future. The only one that can decide the future of Adolph Clark is the district attorney and he has already decided that his fair haired boy shall not be touched. 2222

Well, they had a couple of other witnesses. They had one fellow, Banks, who had a .45 gun, an automatic, who passed it around from one to the other, having had it in his possession without a permit. They have had two others who have had the alleged gun in their possession without permission. Apparently it is all right with the district attorney. They are not charged with any crime. It would be illegal for you or I to walk around with a .45 automatic, but for these boys who are being used, it is perfectly okay—no crime involved. 2223

I will ask you to consider the background of those witnesses. I will ask you to consider what they have testified to, their reason for testifying. Is it not true that each one of those boys who admitted having posession of the .45 caliber automatic may or may not have been an accessory to this crime; may or may not have perpetrated this actual crime on December 13th?

You are entitled to answers from the district attorney. You men are going to decide whether two men shall live and you are entitled to know the facts of the case—why they were used; why they were granted immunity; why they can go around the streets of the City of New York possessing a .45 automatic without a permit, when you and I could not do it?

George Moore testified in this case. He took the stand as a witness in his own behalf and at 11:30 on Friday Mr. Foley proceeded to cross-examine him. After examining him from 11:30 to 4:30 on Friday, he finished with him yesterday 2225 morning after about an hour.

You have had the opportunity of seeing George Moore on the stand. You have had the opportunity of seeing George Moore subjected to a cross-examination by one of the ablest prosecutors in this State. I am going to ask you when you consider this case, to reflect back on what George Moore told you in his own defense; reflect back upon the answers he gave to the questions propounded by Mr. Foley, and judge for yourselves.

George Moore emphatically, after taking the oath and taking this stand—emphatically denied that on December 13th, 1946, he was in Ray's 2226 liquor store. He emphatically denied being in the Bronx. He emphatically denied firing a gun or having a gun on him in Bronx County.

George Moore told you from the witness stand, "Yes, I borrowed a gun that afternoon from Banks and gave it to Adolph Clark." Where did Clark go with that gun? Who can tell you where Clark went with that gun on December 13th, 1946; or whether Adolph Clark shot the man in the

liquor store? The man in the liquor store said it was "a light skinned colored man." Adolph Clark borrowed that gun on the afternoon of December 13th and appeared in Bronx County that same day with that gun. Adolph Clark answers the description as given by Mr. Shaw.

Mr. Shaw was asked, "Did you recognize George Moore?" You will remember his testimony. "Mr. Shaw, did you recognize George Moore when you saw him in the district attorney's office?" No, he did not. On February 7th, 1947—February 7th Mr. Shaw, the proprietor of the liquor store, saw George Moore in the district attorney's office and did not recognize him. 2228

Is that important? Is that important to twelve jurors who are going to decide whether George Moore will live or die? Did he subsequently recognize him? Yes. "When did you recognize him, Mr. Shaw?" "After George Moore had confessed to this crime." Mr. Shaw then recognized him.

It should be important to men who are going to decide this case whether George Moore was in Ray's liquor store on the night of December 13th, 1946. It should be important to anybody passing upon a fellow human being's life, whether that fellow human being has been identified by the person who claims he spoke to him and saw him.

But has he identified Moore, or has he identified Clark? According to the police, the first detective that appeared on the scene that night, Mr. Shaw told the detective a description of Clark. Was Mr. Shaw in a better position on the same night, to give the police a description of the man who entered his store? Would he approximately two months later, fail to remember that face, whether it was light or dark? 2229

Shaw said after he confessed, he recognized Moore, which brings us down to what the People have placed in evidence here as a confession; not one confession, but two confessions. We have tried in our examination of the witnesses as best we possibly could, to make a word picture for you men and for ourselves because we were not there on the scene on the night of February 7th, 1947, in the district attorney's office of Bronx County.

George Moore, our client, was brought to the district attorney's office about 5:30 or a quarter
2231 to six. He was taken into Mr. Ryan's room or office. George was questioned about the Burke case. The sum and substance of that, as stated by Mr. Ryan, he denied any complicity in it whatever. No stenographer was present during the first few conversations that Mr. Ryan had with George Moore.

There are no statements before you men of the questions that were asked of Moore and his denials or exactly what his answers were, because they did not take any.

There is testimony by George Moore that he was taken from Mr. Ryan's office on three or four occasions in the company of detectives. You heard him testify he went to an adjoining room
2232 on one occasion and then to a room across the hall. You also heard him say he went to a wash room.

You also heard him say that in these various places he was struck, kicked, thrown to the floor; that they threatened to shoot him; told him to open the window, take a chance to escape and he would "plug" him.

I do not know if you men have been around. I assume you men are just as well informed as any of us about police procedure and police investigations. I have heard police officers take the stand—only this very afternoon one police officer said he never heard of a policeman hitting anybody. Well, I don't know whether he was not informed or whether he had never heard of it. Possibly it was he had never heard of it.

When this testimony is going in, it is up to you to call into play your experience. Call into play what you men know. Your men know what the situation is. But you may say, rather some of you may say, "Not me. They could get me up in this room and I wouldn't say anything." Maybe you wouldn't. I don't know what I would say. I don't think I would safely bet on what you men would say under the circumstances. 2234

But, after all, you men are business men in this community. You men are in different positions in the community than George Moore. George Moore, a poor colored lad, but are you going to abandon him because he is colored? Are we expected to abandon him because he is colored? Is not a poor colored lad entitled to the same treatment that you jurors would expect were you jurors in the same situation of than any of us would expect? 2235

Then how can any of us say how we would have acted on the night of February 7th when we would have been taken to the district attorney's office with ten detectives, twenty detectives, forty detectives, according to the Daily Mirror. The Daily Mirror reported that there were forty detectives out there.

George Moore was alone. The poor colored lad was there alone with forty police officers in the district attorney's office. In spite of that, when he was questioned by the Chief Assistant District Attorney, George Moore denied it. He denied it as long as it was humanly possible for him to deny it.

But how much is a human being bound to take? How much can a human being endure? How much would anybody take? That I cannot answer. That is one of the questions you gentlemen are going to answer.

2237 You may say, "Let us look at it and we will see if this really did happen." "What is the normal thing?" You men are in business. You call a person in, one of your employees for something. You ask, "Did you do this?" or "Did you falsify these records?" or something. They say, "No." You start questioning them about it. You do not get four or five of your male employees to take them out for awhile and then bring them back again.

Mr. Ryan says he left his office at least three or four times before he confessed. When I asked Mr. Ryan, "Well, now, before you got any admissions, would you know exactly how many times he left your office with the detectives, went to
2238 another room with the detectives and then came back to your office?" Mr. Ryan answered, "Do you want my best recollection?" "Your best recollection." "My best recollection is that it might have happened three or four times."

Why was it necessary for the detectives to take George Moore from Mr. Ryan's office on three or four occasions? Why was it necessary to take him three or four times before he admitted it?

Is there any doubt in the minds of anybody what happened to George Moore on those three or four occasions?

Oh, yes, they came back in rebuttal and put a couple of detectives on the stand and Mr. Foley said, "Did you beat George Moore in my office on February 7th?" The detectives said, "No." Well, I ask you men to hazard an opinion as to what would happen if one of those detectives said, "Yes, I beat him," with Mr. Foley sitting here and his superior officers sitting out there. Do you think under those circumstances any police officer would come before you and say, 2240
"Yes, I beat him"? There was only one answer for the police officers to give and they gave it.

Do you think Mr. Foley would call a police officer whom he knew would take the stand and say, "Yes, I beat Moore"? No. But detective Farrell would have you believe that Mr. Foley was taking a chance on him. Detective Farrell says, "No, I didn't talk to any one before I took the stand." Mr. Foley asked detective Farrell, "Did you strike George Moore," Detective Farrell said, "No." You have to use your own judgment on those things. What happened? What went on? Why has a witness so testified?

You also heard Mr. Shaw testify as to the statements obtained from George Moore; that 2241
after they had been completed, Mr. Ryan stood about two feet from George Moore and read the statements; that when Mr. Ryan had concluded reading them, he directed George Moore to sign them. Mr. Ryan says if Mr. Shaw testified that way, Mr. Shaw is incorrect.

Mr. Ryan said, "I sat down at my desk while George Moore sat within two feet of me." It is

inconsistent. Does it make any difference whether Ryan stood over him about two feet from him and read the statement and directed him to sign it. Whether those little inconsistencies or whether those big inconsistencies mean anything, that is up to you jurors to determine, because you jurors are the final judges in this case.

There were some changes made. George Moore is supposed to have made some changes in the confession with pen and ink—he claims at Mr. Ryan's direction. Mr. Ryan said he made them of his own accord. However, I want to point out
2243 with reference to one of those changes. Mr. Ryan stated with reference to that particular change, it could have been picked up simultaneously by George Moore and himself. He denied the other changes in the statement were made simultaneously. That is something for you gentlemen to decide.

You have heard George Moore's testimony as to the circumstances under which that statement was obtained. You have heard George Moore's testimony as to the facts incorporated in that statement. You have heard the testimony of Mr. Ryan that he had conferred with Clark, Banks and a couple of others getting the facts of this case before he sought to take the statement from
2244 George Moore.

There has been some discussion back and forth throughout the trial. Mr. Foley stated in his opening that George Moore had been shot in the left arm. Mr. Foley stated in his opening that George Moore had been shot; that the bullet penetrated a portion of his arm, up from the elbow and came out at a point on his forearm.

Mr. Foley was questioning George Moore. He questioned him as to any wounds on the arm.

George Moore told Mr. Foley in your presence that he had a stab wound on his arm and more specifically he stated in answer to a question by Mr. Foley, "I have a scar on me right below that; do you want me to show it?" Mr. Foley said, "No, you don't need to." George Moore stated, "Because it don't look like a bullet hole, is that why you don't want to see it now?" Mr. Foley said, "I said, no, not yet."

Did Mr. Foley want to see it? Was George Moore on that stand? Did Mr. Foley ask to see 2246
it? No. No. Mr. Foley knows right well George Moore has not any bullet wound in his arm. But he tried to get the inference across to the jury that there was a bullet wound in his arm. Why didn't he ask George Moore to exhibit it to you? Why?

He was relying on Dr. Hochman. Dr. Hochman made an examination of George Moore on the night of February 7th at Mr. Foley's office. You gentlemen heard Dr. Hochman state right from that witness chair that he could not say that the wound on the arm of George Moore was a bullet wound. That testimony is from their own witnesses.

Whether George Moore received a bullet wound 2247
should be important. Mr. Foley in his opening stated George Moore was wounded in his left arm. George Moore took this witness stand. George Moore opened himself up to Mr. Foley. There was not anything that Mr. Foley would want to ask that he was not prepared to answer, and truthfully so. He had his arm there. Mr. Foley had a right to ask to see it; had a right to let the jury see it.

The facts in this case as we have marshaled them together, we have presented to you men the evidence, all the evidence that was available to us. We have given to George Moore our best, believing in him, believing in his defense.

I have purposely not mentioned Haughton throughout my summation because Haughton is well and ably represented by counsel. Haughton's counsel will follow this summation. If through this talk or during this talk or if at any time during the course of the trial, you feel that counsel has neglected to bring out something
2249 that you may have thought of, I ask you at this time to reflect upon it and if there is something we have not mentioned here, give your thought wherever you think it should be given to it. We have tried diligently to present the picture to you.

The case has been somewhat lengthy, but at the same time the testimony should be fresh in the minds of all of you. There is no need of my reminding you men of your duty in this case. Your duty in this case is great. Your burden is heavy. We have carried the burden so far. When I leave you today, as far as George Moore, that burden as to George Moore has been shifted to your shoulders. I know you will carry it and
2250 decide it according to your oaths.

A man's life is at stake. We are going to ask you to give it consideration because for many of you it is the first time you have ever been called upon to make a decision that the Supreme Judge makes. It is the first time you men have been called upon to say whether a fellow human being shall live, continue to live. It is a weighty decision.

In this case you cannot forget—you must not forget that the district attorney is trying to usurp the powers of a jury—is trying to be supreme. When in this court room he stated, in effect, "I only want two lives, take their lives, but let my accomplice, Adolph Clark, alone," are you in a position to put the stamp of approval on the action and conduct of the district attorney?

Who would not only let him loose without indictment, but uses testimony in an attempt to distinguish between Clark and two other men; if the State's case is correct, are you going to 2252
put the stamp of approval on this and say, "Yes, Mr. Foley, we are going to do as you say. We will take the lives of two men. We will follow your decision. We will let your fair haired boy live?"

Gentlemen, give this case the consideration and judgment you think it warrants and decide it according to the evidence you have heard from the witness stand without prejudice against the defendants. Decide the case of a human being. Make that judgment that you feel in good conscience you should make. Make a judgment that will satisfy you today and in the years to come, because, gentlemen, there is no changing your decision. Make a decision that will satisfy your 2253
conscience because you will have to live with your conscience.

I say in behalf of George Moore that the district attorney has failed in his effort to prove George Moore guilty beyond a reasonable doubt. In behalf of George Moore, I ask for a verdict of acquittal. I ask you in his interests and in the interests of justice to render that verdict. Thank you.

The Court: Gentlemen of the jury, by agreement with the attorneys, there will be a summation by counsel for the defendant Haughton and by Mr. Foley. The Court will submit the case to you tomorrow. I won't be able to reach you before 11 o'clock. We will get both summations in in the morning and the charge in the afternoon.

You are admonished by the Court not to discuss the case; form no opinion until the matter is submitted to you by the Court, which will be some time tomorrow afternoon.

2255 11 o'clock will be time enough to be here tomorrow morning. Defendants remanded.

New York, April 2, 1947.

(TRIAL CONTINUED)

Appearances: As noted on title page.

The Court: Mr. Fleischman.

Mr. Fleischman: May I have Ex. 27, if your

2256 Honor please?

The Court: Put the exhibits on the table.

Mr. Fleischman: Just one, Mr. Hirscher.

(Exhibit handed to counsel.)

Mr. Fleischman: Your Honor, Mr. Foreman and gentlemen of the Jury: Mr. McDonough and myself have represented Lester Haughton throughout this trial. You have seen Mr. Wilkinson and Mr. Ehrman on occasions get up. Perhaps it has been confusing as to who our respec-

tive clients were. So at the outset we make it clear to you that Mr. McDonough and myself have represented Lester Haughton.

You gentlemen, from our observation have been very diligent throughout the trial and very attentive in listening to the evidence. We ask that that attentiveness and that diligence will continue until you have arrived at a verdict.

This has been a long trial. We have been on trial for ten court days. I know you must be weary because we are weary. But I want you gentlemen to carry on, as I know you will carry on; in giving this case the same careful consid- 2258
eration which we have observed you have been giving it up to now in fulfilling your obligations as jurors; jurors who are listening to the evidence in a case wherein the district attorney is asking you to take the life of Lester Haughton.

Mr. McDonough and myself did not know Lester Haughton before February 19th, when we were assigned by the Court to represent him. The law provides that a man is entitled to counsel when he has no funds of his own. Gentlemen, that is as it should be because when the human ery is greatest against an individual, when he has no one to turn to to come to his defense, when he has no one to present his story to you, the law provides, under our system of democracy, 2259
that counsel be furnished to him. We consider ourselves privileged as having been selected to present his defense to you.

Getting down to the case at once, this is the last opportunity that any of us of defense counsel shall have an opportunity to speak to you. The law provides the manner in which or the order in which a case is to be presented to the jury.

Defense counsel present their summations first and then the district attorney presents his summation. We do not have an opportunity after that to get up and rebut anything the district attorney may say. That burden is placed upon you gentlemen.

Any questions or any challenges the district attorney makes to us in the presentation of the evidence or the method in which the evidence was presented to you or the thoughts or doubts that may arise, we cannot answer them. We are silent once I am through with the summation here
2261 today. It is up to you gentlemen from your recollection of the evidence, from your recollection of the testimony to carry on that burden for defense counsel.

There is an unwritten law in the Police Department that "a cop killer" shall not go unpunished. That unwritten law has been changed in this case to another one by the police who have investigated this case. They have changed that to "a cop killer shall not go unavenged."

The police testimony and the testimony generally in this case has indicated to you gentlemen, as it has indicated itself to us, that the police were not interested in solving the Burke killing. They were interested in finding somebody as a
2262 "scape-goat." They were not interested in solving this crime. They were interested in hanging this thing around the neck of the first individual that would implicate himself in it; the first one that might give them a statement or confession.

That is not my statement. You gentlemen, if you recall the testimony, as you do, remember how Shaw, the store keeper, was brought, not on one occasion but on two different occasions—on

four occasions to look at the same people—Moore and Mills. When Detective Foden was asked on cross-examination, had their appearance changed the second time, he said, "No."

Why was Shaw brought on four different occasions to identify Moore and Mills as having been implicated? I will tell you why. Foden was trying to get them to put the finger on them. He wanted to get somebody in this case. He was not interested in whether it was the right party or not. He wanted somebody identified. He wanted a confession. So he takes Shaw on four different occasions to look at Moore and Mills. Shaw, the 2264
first time, told him he could not identify Moore and Mills. The "Moore" I refer to is "Arthur Moore," not the defendant on trial.

Then you remember the testimony of Starnes. They tried to get him to implicate himself in this crime. Foden took him out in a car. They made the rounds of the Bronx. He fed him intoxicating liquor. He tried to get him to implicate Moore—Arthur Moore, not the defendant on trial. He tried to get a confession out of him. When Mr. Foley cross-examined Mr. Starnes, he said to him, "You have not been indicted in this case, have you?" Mr. Starnes said; "No." But if Mr. Starnes had been given enough liquor, had been sufficiently intoxicated, if the police had been 2265
successful in getting a confession out of him, Starnes would have been on trial here—not these defendants.

The police were not interested in a solution. A policeman had been killed. The resorted to the "rule of the mob." We must have vengeance here. Not justice, vengeance. A life has been

taken. We must take a life. It is unimportant whose life it is. That takes us back to the prehistoric man. We have moved many centuries from that point where we kill without reason or without cause.

I know, gentlemen of the jury, you are not interested in vengeance. I know, gentlemen of the jury, you are not interested in "mob psychology," which always says, "Kill, kill, kill." You want to know what is the evidence in this case? What is the testimony against Lester Haughton that causes the district attorney to say to you,

2267 "We want to take his life."

Let us examine that testimony. Let us look at the record to see what the record has to say, sifting out the bulk of the testimony. There have been many, many witnesses that took that witness stand. There are about two whose testimony I have to go into detail on, as far as the defendant, Lester Haughton, is concerned. Two I have to discuss with you and focus your attention on in your consideration as to whether the life of Haughton should be taken.

One Brown took the witness stand and testified about supplying some bandages and aid. His testimony did not affect Haughton in any way.

On Askew took the stand and testified the gun

2268 ultimately found its way into his possession. His testimony did not affect Haughton in any way.

One Banks took the stand and testified he originally had the gun and turned it over to somebody. His testimony did not affect Haughton in any way. And so far down the line.

The first time the finger is put on Haughton is when Adolph Clark took the stand. When Adolph Clark took the stand, you heard the tes-

timony from Adolph Clark. Adolph Clark testified he went up there at one time and saw that liquor store. He went up with Haughton to see some girls about a week before. They walked by that store and he said to Haughton, "That's an easy place." They kept on walking.

You also heard how Clark testified on December 13th he might have suggested this stickup in the Bronx. But he did not go along because he did not have the carfare. He also testified he remained behind for a telephone call. He further testified the gun was given to him by Haughton some time on Sunday. Then he makes it Saturday afternoon. Then Saturday morning. And finally settles on "after midnight" on December 13th. 2270

Adolph Clark is in this thing right up to his neck. I do not know but that he was not the fellow that went up there on December 13th and fired those shots. Of all the testimony that has been adduced here—the description given by Shaw—you remember that description; it was a very accurate description. He gave the height of the man, the weight of the man, the age of the man, the clothes he wore. He told you about "a light skinned negro with a mustache."

Does Clark answer that description? Why did Clark shave that mustache off after this trial started? Was he trying to hide something from you? 2271

Shaw took the stand. Shaw knew who came into his store that day. He was the only one who did know. He remembered the men well because of the accurate description he gave to detective Holt as to the height of the men, the weight of the men, the clothing they wore. Did Shaw identify Haughton as being there?

There is not one word in the record, not one by Shaw that Haughton was at that store on December 13th. I challenge the district attorney to show you anywhere in Shaw's testimony where he said Haughton was there on December 13th. Certainly he would know whether he was there. Shaw was there. Was Adolph Clark up there, with something to hide save his own skin, talking perhaps so that he could make a deal to implicate somebody else and leave him out?

Shaw knew who was up there that day. That accurate description he gave to the detectives
2273 proves that. He never fingered Lester Haughton. Throughout his entire testimony not once did he say Lester Haughton was in the store on that night.

I say, gentlemen, Adolph Clark's testimony must be disregarded by you completely. You can give no weight to it whatsoever because of his complicity in this thing, because to an extent he is involved in this murder.

What is the only other evidence in the case outside of Clark's testimony, that connects Haughton, Lester Haughton, with the case? The confession—the alleged confession. Now, gentlemen, I say to you if that confession was obtained through force, was involuntary, you have got to
2274 disregard it, and I will ask the Judge to so charge.

It is more important for us as American citizens, to ascertain whether a confession is honest than to determine whether or not a murder was committed. The law provides that a confession must be voluntary, and if it is not, you have to disregard it. There is a reason for that, gentlemen.

The reason for it is the protection of you and me and the protection of this defendant. If people can be forced to make statements through threats and through violence and those statements can be used against them, your safety, my safety and the safety of our children would be in jeopardy. It strikes at the very fundamentals of our democratic set-up. We would be going back to the "Star Chamber" proceedings of olden days when people were tried, not by a jury of their peers but by the men, the fiendish men that tried them. It is that very thing that forced the earlier settlers in America to come to this country to escape that type of persecution—and they 2276
wrote into the law that when a confession is involuntary, when a confession is obtained by force, by fear, by threats of violence, that confession is no good.

That is important, gentlemen. If there is a reasonable doubt in your minds as to whether that confession was obtained through force, through fear, you have got to disregard it. If there is a reasonable doubt—you remember when we impaneled you, we spoke about "reasonable doubt". You told us you would follow the law in that regard, that if there is a reasonable doubt, you would acquit.

That is the law, gentlemen. That is the law 2277
for your protection, for my protection, for the protection of Lester Haughton—that law of reasonable doubt. It is better that one hundred guilty men go free than that one innocent man be convicted. That comes to us from the Bible.

The law surrounds us with these safeguards, telling us that involuntary confessions are no good; they have got to be disregarded; telling us

if there is a reasonable doubt in our minds, the presumption of innocence with which each of us is cloaked must be the controlling factor.

Was there that fear? Was there that force? Was there that duress that caused the statement of Lester Haughton? Let us go back to the early morning of February 8th when Lester Haughton was routed out of bed, yanked out into the hall—you heard one of the detectives testify that he was so yanked out into the hall—struck over the head, although the detectives denied it.

They never beat prisoners! I leave that to your experience and your knowledge. They took
2279 him in the apartment; started questioning him about an automobile. Detective Tracy told you that was the conversation when he came into the bedroom—they were talking about an automobile. They had him sitting there with his hands on his knees, handing his clothes up to him.

One of the detectives struck him again, called him a name and said, "I would like to put a bullet through you." Do you think you would be terror-stricken under those circumstances? What would be your frame of mind or my frame of mind? After he was dressed, they hustled him downstairs and he was told by the detectives, or one of them, "Run, I want to put a bullet through
2280 you." He was taken in the car.

On the way to the district attorney's office there is a little incident. The car gets stuck. The people in the front seat get out to push the car. You heard the lady detective say she did get out, although some of the police officers' recollections were very poor. They did not remember whether she was in the car or had got out of the car. Some were indefinite as to whether she was

in the car. For police officers it does not speak well for men who are supposed to investigate facts and ascertain the truth. That is only a minor incident, but these minor incidents are cumulative and they cause questions in our mind.

What plays here? What are they trying to hide? That lady detective said definitely she got out of the car. Tracy was wrong. He said she didn't get out. While they were out of the car, a detective once again strikes Haughton and for the first time he is told that he is "a cop killer." He said, "You cop killer. Try to get out of the car and run. I want to put a slug into you," or 2282
words to that effect.

Mind you, gentlemen, here is this negro boy. They were not handling him with kid gloves. I know most of us are tolerant, tolerant toward our fellow human beings. But some of us are not so tolerant. When we get a black boy, we treat him as an underdog of underdogs. By and large the Police Department has as fine a group of men you can find, but on the fringe you will always find those who bring discredit to the Department.

In that frame of mind this boy was brought to Mr. Ryan's office at two o'clock. Mr. Ryan starts questioning him. He does not call in a stenographer while questioning him. No. He has got to prime him full of facts first. Didn't you go up 2283
to the liquor store on December 13th, 1946, between five thirty and a quarter to six o'clock? Didn't you jump behind the counter when somebody else fired some shots? Didn't you run out of the store and go up 173rd Street and then to the Lexington Avenue subway, or whatever it was?

Lester Haughton told you he denied everything Ryan had asked him. Why wasn't a stenographer brought in at that time to take down all those answers? At three o'clock—he had been there approximately an hour—there was some testimony that Moore went in there and Moore testified—Haughton testified Moore said to him he had spoken to a lawyer. You heard Moore's testimony about some "phoney" lawyer being pulled on him. "You can make a statement because it is involuntary. It will be thrown out in Court." He told Haughton about the beating he
2285 got. "Go along with them."

Then a stenographer was called in and questions were asked and answered. He had been primed for an hour to say how this thing happened. You could have told this story in ten minutes, as to how the alleged stickup took place. But he had to be primed for an hour. Mr. Foley asked him—this is a thirteen page statement—"Can you remember everything in that statement?" Here is a thirteen page statement. Look at it. It can be reduced—it is double spaced—it can be reduced to four or five on the essential facts covering the stickup. If I were primed for fifteen minutes, I could give all the information in there.

2286 Let us look at some of the questions in there and some of the answers. Yes, the defendant Haughton starts in giving testimony. The detectives are waved out of the room. One of them said, "You had better go along with the D.A. Remember what I told you in the car. If you don't give cooperation, we will take you down in the basement and beat you." He emphasized that when he walked out.

Then a stenographer was called in. Question: "Where was he?" This is in the statement. Answer: "Behind the counter. In front of the counter somewhere. I don't know." Is that the answer of someone that was in the store that night; or is that the answer of someone who has been told something by Mr. Ryan, groping into the recesses of his mind trying to recollect what he was told? Question: "Where was he?" Answer: Behind the counter. In front of the counter somewhere. I don't know."

Let us go further. Question: "Over the New York Central tracks at Park Avenue?" Mr. Ryan 2288
asked the question. "I believe so, yes." That called for a "yes or no" answer. He has to be primed. "When you went over the bridge, did you catch up with 'Stack'?" He wasn't being asked what he knew in parts of this confession. He is being primed. Answer: "Yes." "After you crossed the bridge over the New York Central tracks, where did you go?" "Where did I go?"

Excuse me, gentlemen. Question: "After you crossed the bridge over the New York Central tracks, where did you go?" Answer: "Where did I go?" The man doesn't know what to answer. Question: "Yes." His answer: "I went downtown." Ryan was not satisfied with that answer. 2289
That did not jibe with the facts as somebody had given them to him. Who was that somebody? Adolph Clark.

He was not satisfied, so he goes on and says—leads him into answering—"Did you go to the school yard before you went downtown?" Here the boy said he went downtown. Ryan remembers he left something out, so he brings him back again and says in his next question: "Did you go to

the school yard before you went downtown?" Answer: "Yes." The boy was going along with him.

"Where was that handed to you, the gun?" "I don't know. Maybe it was in the school yard." Isn't that the testimony of somebody going along with a preconceived idea that has been put in his head? "You came to the Concourse?" "Yes." So on down the line.

"Did you get hit with any of the bullets?" "I had a cut. Maybe it was a bullet or a piece of glass." There was some testimony or something
2291 went on before he was called for questioning, or some information the police had that one of the men was cut or wounded with a piece of glass. He was going along with them.

But you heard the testimony of a witness on the stand, Mrs. Flett, Supervisor of Nurses at the Joint Disease Hospital. She has no ax to grind in this case. She has no interest in this case. Don't tell me she lied when she said she looked at Lester Haughton and didn't see a mark on him on the 15th. If there were a wound there, she certainly would have seen it when he reported for work on that day. She, more than any of us, is a competent medical observer. Isn't that evidence of the fact he was going along?

2292 Yes, then the confession goes on: "Is there anything else you want to tell me about what happened on December 13th, 1946?" "No, sir." When he was left on his own resources, there was nothing to answer because he knew nothing of what happened on December 13th.

Question. "About any other matter?" Answer: "No, sir." Then they go on: "This statement you made to me is entirely voluntary on

your part?" Answer: "Yes, sir." Was the man threatened, beaten, in fear? Is he going along? Under those circumstances, do you think that was the truth; that it was made entirely voluntary?

He knew he had to go along right up to the end. "I have made no promise to you of any kind." "No, you haven't." "You have been been treated well since you came to the district attorney's office?" "Since I have been here."

Sure. They bought him sandwiches; they gave him tea. They gave him cigarettes. All they needed to complete the picture was to supply him with slippers and a smoking jacket. Gentlemen, 2294
there is no doubt they gave him tea. There is no doubt they gave him crackers. But why? Why? They knew what had preceded these confessions. They knew these confessions would be attacked in court. They knew they had to "dress" the picture up. So they gave the defendant tea. They gave him cake.

Snyder gets on the stand. He said, "We took their photographs. It was all very voluntary." Where was he when the beating took place? Where was he when the threats took place? How did he know it was voluntary? He came in at the tail end of the whole thing with a photographer and took pictures and observed they were 2295
not threatened. You had an opportunity of observing him on the stand. He looked like a witness who was too willing to testify. I wonder why. I don't know. Maybe you have the answer.

Yes, then we come down to where we have got to give this confession a little more window dressing. We have to make it look like "the real McCoy." We have to make it look good. What did

they have Lester do? They intentionally have him make mistakes in the confession, so that they can show the defendant read it. They have him line out one of the errors and initial it with his own name.

They want to show you he read it. I say they intentionally make mistakes because you heard the testimony of the stenographer, Mr. Salmore, on the stand. He was reading from his stenographic notes. What did he say about these corrections here on page 393? This is Mr. Salmore, the stenographer, reading from his notes.

2297 Question: "Now did Adolph Clark come up with you and 'Stack' to the Bronx?" Answer: "No, he didn't." Question: "What happened to Adolph Clark?" Answer: "Nothing. He just didn't come, that's all."

But when those stenographic notes are transcribed, what do we find? Instead of "Now did Adolph Clark come up with you and 'Stack' to the Bronx?" we find he had "Adolph Stack." The name "Stack" is inserted in the stenographic minutes. But from his notes he was able to give it to you correctly—it was "Adolph Clark." In this transcript the name is unintentionally put in there as "Stack." So Mr. Ryan again directed Lester Haughton's attention to it saying, "Now
2298 that should be Clark there, shouldn't it? Cross it out, Lester, and write the word 'Clark' in there and then initial it." They want to make this thing look good. Tea and cake and then the defendant crossed it out and initialed it.

The most ridiculous thing, however, is in Moore's statement when they had him change "11 A. M." to "11 P. M." So they want you to believe as a man who just killed a police officer,

he is interested in the accuracy of a statement except where he is concerned with crossing out "A. M." and making it "P. M."

Window dressing, gentlemen. That is all it is. Window dressing. They knew they would have to come to court. They knew the circumstances under which the confession from Lester Haughton was obtained? They knew it would be attacked. So the tea and cake comes in. Nice treatment. The "brotherly love" they exhibited there. They knew it would be attacked. They want to show you he did it. They intentionally made the mista e, although the stenographer had 2300
it accurately in his notes, so that they could point to it and say "Cross it out and initial it."

Gentlemen, that is the confession. That is the statement they took from Lester Haughton that night. Reflect. Was that statement obtained honestly? Was it obtained fairly? Or was it obtained through force and fear? I know that there would be no doubt in my mind, there would certainly be a reasonable doubt and if there was any doubt and if there is a reasonable doubt, you have to disregard it.

The testimony of Adolph Clark, his alleged statement, that is the only thing they have against Haughton in this case. We sat here days without hearing his name except for my getting up and 2301
saying, "Your Honor, any testimony or conversations the other defendant had with any of these witnesses is not binding on the defendant Haughton. What transpired after the commission of the crime, anything Moore may have said, were not binding on Haughton," and you were instructed to disregard it.

That, gentlemen, and I challenge the district attorney to show you where there is any other evidence, competent evidence—by "competent" I mean evidence that the safeguards of the presumption of innocence entitles us to, other than the statement that Haughton was alleged to have given in the district attorney's office, and the testimony of Adolph Clark.

Gentlemen, if that confession falls, as it must, I am going to ask his Honor to charge you that you have to acquit the defendant Haughton because without that confession the testimony of an
2303 accomplice is not sufficient under the safeguards we put around a man in presuming him innocent.

Let us go to the defendant. He took the stand. He testified in his own behalf. He told you he has a father and mother, who were spearated when he was a youngster. He was placed in the Riverdale Orphan Asylum. His mother died while he was there. He was there for about three years. Then he left and went to live with his father, after the father had re-married. He told you how he got in trouble when 16 years of age. He told you how he got in trouble again.

The D. A.—excuse me, the district attorney is going to tell you what a very, very bad boy Lester Haughton was. He is going into these prior
2304 convictions of his and tell you what a bad boy he was. I do not justify those convictions. I do not condone them. But he is not being tried here for what he did in the past; for what he paid for in time spent in penal institutions. He is being tried here for murder.

You, gentlemen, remember what you promised when we impaneled you—the fact that a man had been previously convicted of a crime, would not

prejudice you in the consideration of the facts in this case. After all, who are we to stand in judgment of Lester Haughton for the life he led when he was a youngster? Before he had matured? Reflect on the background he had. He had no home life. He did not have the benefit of the supervision of parental guidance. He was black. He started with "two strikes" on him from the start. They added another one when they put him in an orphan asylum.

Sure, he got in trouble. But who are we to stand in condemnation of that? He paid the penalty for that. He paid the price for that. He 2306
served time in jail. Knowing that background, knowing the life of the boy before he arrived at the age of 16, who are you or I to say "that there but for the grace of God stand we."

I know you will live up to your promise as to his background. You will not be prejudiced by it. I know you gentlemen of the jury will fulfil your oaths as jurors and that the statements you made to us were made in the utmost sincerity.

We are interested in Lester Haughton when he came out of Elmira after he had done his time in 1946. Who is the Lester Haughton we saw then? A boy trying to pull himself up by his bootstraps. He is now matured. He realizes the 2307
foolhardiness of his ways in the past. He gets himself a job working for Mr. Reidler in the tinsmith shop. You heard Mr. Reidler testify here. He has no interest in this proceeding other than to come here and tell the truth. I subpoenaed him. He came down. He told you how Lester had worked for him; then he went to the hospital to have an operation on his arm; then he came

back and worked for the same man until about the end of October when business was bade and he was laid off.

You also heard about this boy trying to make a go of his life, trying to make a decent man out of himself, where he made application to the Joint Disease Hospital, where he was operated on, as an orderly on December 5th and then was called to work on December 15th; how he worked up to the time he was arrested.

Here was a boy that had reached maturity, trying to make something of himself. He realized
2309 the foolhardiness of his ways in the past and was trying to pull himself up by the bootstraps. You heard Mrs. Flett testify as to his reputation. She said "Excellent." Mr. Foley said to her, "Did you know that Lester Haughton had been previously convicted of a crime?" She said, "No." I shot right back with "Would that have changed your opinion?" She said, "No." She was judging this boy for what he was today, not for what he was before he came out of Elmira.

I ask you gentlemen to follow that example, to follow that degree of tolerance, understanding and mercy and to judge Lester Haughton not for what he was before he came out of Elmira, but for what he is today; a boy that has sought gain-
2310 ful employment. These three fellows that testified here, they never worked. He may have known them. They were cronies from early days. You do not shake those off quickly. Here was a boy feeling his way along, trying to make a go of things, trying to go straight—and going straight.

He told you where he was on the night of December 13th. He went to his brother's, Cecil's,

house for dinner that night. They were able to remember that night by reason of the fact his brother's birthday was the next day; the oldest brother.

You also heard the father testify. You saw that old gentleman up there, that fine, old negro gentleman with white hair; as fine a negro type or as fine a white type as you could find anywhere. He would not lie, not even for Lester because you heard him say, "If my son is guilty of anything, put a bullet in him." He said Lester was home at 11 o'clock that night. "I was listening to the news broadcast when he came home and we discussed the fact that I had forgotten to send his brother a card." Adolph said that Lester had given him a gun after midnight that night. The father said he was home at 11 o'clock that night. Whose word are you going to take? 2312

The brother came down and testified that Lester Haughton was in his home on December 13th and had had dinner at his house. Mr. Foley says to him, "Did you tell the lawyers about that?" "No, sir." "Were you subpoenaed to come down here? No, sir." Does his own brother have to be subpoenaed to come down here? We knew from the father about the fact he was at the brother's house. We were assigned to this case on February 19th and we went to trial on March 20th. 2313

We do not have the facilities the district attorney's office has of dragging witnesses into our office. We have to go out and do "leg" work, which is important in this case. We knew what his testimony was going to be. The father had told us. There was no necessity to talk to him other than to have him come down. We told the father to have him down here on the day of trial.

Gentlemen, I do not have very much more to say. I have tried to give you a picture of Lester Haughton, a human being—not Ex. A on trial here, but a human being, even as you and I; in whose veins pulses the same blood as pulses in ours; who has the same emotions and same feelings as we have.

Remeinber that, gentlemen, You are passing on the life of Lester Haughton. You are to determine whether he shall live or he shall die. Your responsibility is grave, as it have been grave for us in presenting his defense, in asking you
2315 to believe in him, as we believe in him and to get you to believe in him, as we believe in him.

I plead with you gentlemen to acquit that boy. Let him go back and pick up the threads of the life he was trying to rehabilitate himself to, to live in gainful occupation and respectability in the community. And remember, too, gentlemen, when you go in there that if that confession or that statement they took from him goes out in your deliberations, you must acquit. Remember, too, if there is a reasonable doubt as to whether that confession was voluntary, you must acquit him.

Thank you.

2316

Mr. Foley: I would like to have just five minutes before I go on. That will be enough, five minutes, if you please.

The Court: All right, Gentlemen, come down in ten minutes. How long are you going to be?

Mr. Foley: Well, I want to answer both summations and say a few comments of my own. I will do my very best to finish as these Gentlemen

have in about an hour. I might ask for a little bit more. I have to cover both summations.

The Court: Yes; you are entitled to as much time as you want. Come down in ten minutes, please.

(After a short recess.)

Mr. Foley: If it please the Court, Mr. Foreman and Gentlemen of the Jury, in summing up to you on The People's contention concerning what evidence has been adduced here and what 2318
inferences may properly be put upon that evidence, I propose first of all to speak about those things that Counsel emphasized, each one in his own summation, and then comment on those things that apply to both cases generally or to the whole case in the hope that I can avoid duplication.

The statements that I made to you in the beginning that I characterized for you as The People's opening were statements of facts upon which I told you I would ask for the conviction of these two defendants, Moore and Haughton, of murder in the first degree at the conclusion of the trial and I said that we would prove them and that, if proven, they constituted a sound basis 2319
upon which you could in conscience without prejudice or without sympathy render a verdict according to your oaths. That was a sound statement of law and those matters have all been proved.

I haven't interrupted Counsel when they have said: "They want you to take the lives of these men; they want you to put these men to death." Well, that is all right. Perhaps it is designed to shock you. Perhaps it is designed to make you

feel you are a butcher or an executioner or a hang man. Gentlemen, you are all American citizens, who enjoy the liberties and the privileges of this land and with that goes an obligation to do your duty as a citizen.

When you serve on the Jury you are serving in as high a capacity and with as great an opportunity for service to your country and to your government as in any way you might, except possibly in the active armed forces in time of war. You have a function to perform and, briefly, it is that you determine the facts. You determine
2321 which of the contentions put forward to you has been established by the evidence according to your own intelligence and your conscience.

I have a job to do. It is to gather the evidence, with the help of the police, as an investigating agency, to marshal it and to preserve it and to present it to you, the citizens of the county. The Court has a duty. Each one of us plays some part in this serious duty, in this chain of events, just as Defense Counsel have a duty to defend to the utmost the men to whom they are assigned, a duty which they not only are permitted to perform, but which is demanded of them. The more vigorously they carry it out, the more admiration you must have for them, and if they were to shirk
2322 it in any respect they would merit nothing but your contempt.

That doesn't mean that I agree with them or with their contentions, by any means, but I speak about it, because they have a duty to perform and I have one and the Court has a field of operation and a duty and so have you, and none of us is an executioner. I present the evidence and you weigh it and you determine the questions of fact.

You are not concerned with punishment. The sentence will be pronounced by the Court.

So much for the atmosphere of the first presentation to you. Counsel in there said something that significant. In his summation he wanted to talk to you about those things that he deemed important and the first of those things that he mentioned was that some of the wtinesses testified falsely, and the first of them to merit his attention was Richard Shaw.

Now, Richard Shaw to my mind is a Bronx citizen, who operates a liquor store. Whether he or his wife owns it directly I don't know. He says it is in her name. He works there. He 2324
was pilloried here as though he were a defendant and I leave that to your own recollection that he was more aggressively assaulted and pilloried with these questions than were these men who are accused of murder. His motives were impugned. His integrity was maligned and there seemed to be a general disposition to regard him as meriting less courtesy or common consideration than these two defendants here.

So far as I know, he didn't stick up any liquor store. He didn't shoot somebody through the head in a murder that required seven distinct operations. That is not an automatic gun in that sense, Gentlemen, at all. You pull it once and it 2325
just fires one shot. To fire seven shots out of it you have got to pull the trigger seven times. I don't know that Shaw did anything like that. They say he tried to put the finger on everybody. As a matter of fact, he didn't put the finger on anybody and, Gentlemen, there is not in his testimony under examination by me on the stand one statement that he ever recognized

either one of these men, because I didn't ask it of him. I knew what he would say if he were asked.

I never put any witness on that stand that I don't know from personal conversation with him or through the investigation of an Assistant who reports to me or because I was present and observed the things, concerning which he is going to testify. I never did. I talked with Shaw, as you know, many times. I was with him in the Grand Jury when he testified. I didn't say to him: "Can you recognize that man?" because I
2327 knew he would say "yes," and while I believe Shaw completely and I believe that in all honesty and earnestness he is convinced that he recognized Moore now from independent recollection, I couldn't in conscience convince myself that he did. I couldn't help but feel that there might be in his mind an impulse to come to that conclusion, which was based upon what Moore had said to him, rather than his independent recollection, and while I don't harp on the shocking side of taking a man's life, I have the responsibility for these indictments. I have the responsibility for the trial.

I am asking you to convict Moore and Haughton too for that matter of murder in the first
2328 degree, but I like to do it in my own way and that is why I never asked Shaw. I believe he is sincere and that he is convinced of the nature and sources of his identification. They brought it out; not me. Shaw said he looked at hundreds. Of course, he looked at hundreds.

This is not a case of a man being apprehended, runing out of a stick-up, where another officer drops him with a shot through the leg and they

go in and make out a D.D. 4 and one D.D. 5 and the case is opened and closed in the one gesture. You saw the D.D. 4s and 5s submitted to Defense Counsel, hundreds of them.

Every suspect, you must know, who even vaguely answered that description, caught with a gun or in a stick-up, here or in New Jersey or elsewhere, was interrogated. Shaw was an obliging and co-operative citizen. He left his home at all hours, but the point is he never put the finger on a wrong man.

They say this is a witch hunt, that we didn't care who killed Detective Burke, that we didn't 2330
want a solution at all, that all we wanted was somebody to be the goat. Well, you have the evidence that as the long days passed from that weird night of December 13th we went day after day after day and week after week, but we never found an indictment against anybody until we had the two men that did the killing, Moore that fired the gun and Haughton that picked the place and brought him there.

That is the truth of that investigation. Sure we tried. We didn't neglect anything. That is not a witch hunt. That is a man hunt and you as citizens of the county know that when we finally mark this case closed, it wasn't because of a whispered rumor, it wasn't because of what 2331
some stool pigeon said. It was because we knew then, as you know now, that we had the right men.

Counsel says to you: "You will never pass on Mr. Foley's white-haired boy, Adolph Clark." Where does he get the authority to usurp your powers: I have no authority to usurp anyone's powers. I have an oath of office and my duties are defined by the Constitution of this State.

Clark, in my opinion, is an accomplice. I have no use for Clark. If I could get Clark into this picture I would gladly tie him up with that pair; gladly, but I have a right, if Clark were actually in that store, if he actually participated in the robbery where Burke was killed, I have a right to say, if I need his evidence in order to get the killer and the finger man, that I can give him immunity. I have that right. I have been doing it for fourteen years. That is a responsibility that lies upon my own conscience, and if I abuse it, I am subject to removal from my
2333 office. That is where the right lies, but that is not so in this case. Nor has any man ever taken the stand in a case that I have tried and said he had no promise if he had one.

When Clark took that stand he had no promise from me. Neither had Brown or Askew or anyone else. Banks in possession of the gun; Askew in possession of the gun. The others? I don't know what Brown is in for. Dupree said he was awaiting sentence and I don't even know what he is awaiting sentence for. He will go back when he is through here, when this case is over.

I don't know what I could promise Banks or Askew. If it is an 1897, illegal possession of a
2334 gun, it is downtown. It isn't up here. Yes, I have that right and I have that responsibility and if Banks had actually been present and participated, I would still give Banks an out to get the man who picked the job and the man who killed Burke, and if it were so, I would tell you it was so.

Something else was important to Counsel. He asked that you remember when you go in to the

Jury room that Moore on the stand denied he was in Shaw's place; he denied he was in The Bronx; he denied firing the gun, and as Counsel says and mind you, "he was under oath." Well, you did have an opportunity to observe Moore upon the stand here through a prolonged cross-examination. It was one where I was painfully conscious that you must have been thoroughly fed up with my plodding along, asking: "Were you asked this question; did you make this answer; was it the truth; was it dictated to you?"

I wanted you to hear from that witness those things which did not of themselves destroy him 2336
or even the plausibility of his story, but those things that would let you see freely in the light of your own experience how his mind operated.

If I were to describe to you the cleverness and the mental alertness of Moore, who sits there and whom you look at now, you would never believe me, but you had an opportunity of seeing him anticipate the question that followed the one he was answering, sometimes even two questions ahead. Break him down? No. He was too good for me, and another day would not have done it either. Moore hasn't got the type of mentality that you can force into a corner by verbal fencing and then secure a bad betrayal from him, but he carried a handicap that no man could suc- 2337
cessfully dispose of of trying to make stand up as a true story which is in its entire essence false.

When he said these questions were asked of him by Ryan and that the answers were dictated. the very wording of the answers themselves, the contradictions that appear in sucessive answers one with the other, the delineations or deletions

rather that he was permitted to make, are all proof that that couldn't be. That is an absurdity. There is no basis in fact or logic for it and no man, however clever, could hope to make that stand up and convince twelve men.

I am not today going to go into all of the detail of question and answer, but I do want you to recall that during his cross-examination Moore did say: "Mr. Ryan and I reached an agreement. I would make the answers that he wanted me to, but he would let me out a little bit. I wouldn't have to say I carried the gun or did the shooting. I could lay that on the other fellow." 2339 "When was that agreement reached; was it before the Stenographer came in?" "Yes." "And you had decided by that time the other fellow had the gun and you did not?" "Yes," said Moore, "that was all decided."

Yet he did put into an answer on page five or People's Exhibit 25, his first statement, what he says was dictated by Ryan and then he deleted what Ryan told him to delete, and all this, mind you, against the background of an agreement previously arrived at that in this confession he would not have the gun. Now listen to the answer and then I will get on to something else. Conversation before they came up to The Bronx.

2340 "The conversation was that I told him, first I asked him, what are you back there for and are the girls easy. He said yes. I was not intending about raping them. He said yes and I told him I am coming up to The Bronx because the 13th, I didn't want to so and so around and I said I wanted to go back and win some money in poker, and we came to Webster Avenue. We came down there and he said go on and I had the

thing on me and that was the first ime I said it didn't look good." Well, you recall the rest of the answer, that they had no money for Christmas and a little bad language.

He tells you that Ryan told him to put that in there after there was an agreement between Ryan and himself that the other man had the gun. Why would Ryan put that in there? Why would he, except that it is a long answer and he just slipped it in inadvertently, but when he had permission to make correction, he took it out. He took it out.

Counsel would say to you with some hope that 2342
you are a mental type that would believe it that these mistakes were made deliberately so that corrections might be made as window dressing. Well, if you believe anything like that, I am wasting my time now.

Counsel says that he tried throughout his case and in his summation to give you a word picture of what went on in our office on December 7th. Well, if he did he didn't quote anything to you from the newspaper man who was there. He didn't quote anything to you from the testimony of the colored porter who was put into this story by Moore on the stand for the first time we ever heard of that.

He didn't refer to anything that Shaw said, 2343
the citizen who was bullied and harried in here, the complainant in the case. Shaw said that he stayed around and talked. There were no restrictions. When Moore was finished his first statement he went over and sat down next to him and that they talked freely and that Moore said to him: "I knew you the minute I came in and I turned my hat brim up and opened my eyes

wide so you would have trouble recognizing me." When he was painting you a word picture of what took place, I don't remember him mentioning that.

He didn't mention that Shaw also said that Moore told him that night, sitting together between the first and second statements: "You are lucky you were so quick that night. I would have grabbed you and used you as a shield and you would probably have been shot." I don't remember that being put into the word picture, but Counsel did, after neglecting that, get on a little further and say Shaw was asked: "Did you 2345 recognize Moore in the corridor?" Shaw says: "No." That is quite right; he didn't, and then he says subsequently he recognized him, yes, after the confession. Well, it was after the confession, but Mr. Shaw under detailed cross-examination said here it was not because of what he heard in that confession; it wasn't because of what Moore said to him, and then he was shut off from further testimony on it. However, he says he didn't recognize Moore when he came in.

There has been a lot of talk about Clark and how more nearly Clark fitted the description than Moore. Well, he certainly does. What the nonsense about shaving off the mustache is, I don't 2346 know. If Clark had reason to believe he might be involved in this thing, where they were looking for a light-skinned colored man with a mustache, he never would have had the mustache on February 7th when he came to the office. He didn't cut it off apparently until he had time on his hands in the jail and he says he was shaping it up.

I have got no use for Clark or Brown or Askew or Mack or any of them. When I accepted you Gentlemen as Jurors I asked you carefully and painstakingly, each one of you in turn, if I produced witnesses who have criminal records, will you decide whether or not upon that stand they told you the truth in this case and you said yes. It is my opinion that Clark, as much as any witness I have heard in my twenty-two years in this office, told the truth on that stand, respectfully, promptly. "Do you know anything about stick-ups?" "Yes." "Have you been in on some?" "Yes." "I don't mean the ones in 2348
Queens; another one?" "Yes." He told everything about himself, coming and going. It wasn't a pretty picture, but you don't expect to find Moore's friends and Haughton's friends in any pretty picture. You expect to find men like they are.

I am not interested in their criminal record here. It is no indication of whether they are guilty or not in this case. A man who never did a wrong thing in his life might be in on a murder and a man with a long criminal record might find it impossible to bring himself to the point where he would kill a human being. That is no part of this.

These men are proven guilty conclusively to 2349
you, not because of their color or their records. They have been proven on the evidence that traced the gun from its first source into Moore's hands and after he was hit, over to Haughton and through Haughton back to Clark, to Banks to where it was hocked with Askew, and then brought into the possession of Butts, the bal-

listic man, who came here and matched that gun scientifically with the bullet that Dr. Hochman took out of Jim Burke's body. Could it be more conclusive?

What cross-examination can they give Dr. Hochman? He found the bullet in Burke's body. What can you say about Butts? It is scientific, the same as a finger print. That gun left a mark on the bullet. That bullet was in Jim Burke's body and we got that gun where Moore said it was. We never knew until December 7th that anybody had been wounded, February 7th, except Jim Burke. There is no record in all this 2351 case anywhere of the District Attorney looking for a wounded man. We never heard of it. All we know about him and his arm wound, he told us; told us that night. I don't care whether he had an arm wound or not. I don't care whether that was one of the true or one of the false things he may have said.

I told you in my opening statement that I didn't know whether Haughton was wounded and I didn't think he knew, that from what he told us he wasn't sure. He had a scratch. He bled a little. It might have been a bullet or it might have been some flying glass when he was hiding at the end of the counter. I don't know whether 2352 he was wounded or not, but it isn't important in this case.

The things I said to you that I would prove, I have proven. Those that I anticipated might be a matter of doubt, I told you in the opening you would have to judge for yourselves; that I would give you both sides of what I had.

Counsel said: "Why doesn't Mr. Foley have Moore show his arm?" What for? He got some

wound on there that Dr. Hochman said he couldn't find himself and he is a doctor and he is a good one. He couldn't find it until Moore showed it to him. He saw that thing and thought an old vaccination was what we were talking about. I would look fine, groping around on that arm, trying to show it to you. But I might ask you; if he wanted to show it to you, why didn't Counsel have him bear his arm? He is his witness. He put him on the stand. He vouches for him.

He even says he believes him. He even says he believes that defense. He said that he believs that defense that we took a man in our 2354
office and beat him and Ryan kicked him. Believe it? I hope that he was carried away by enthusiasm.

He asked you why would I put a man on the stand like Farrell and when he asked "did you talk to Mr. Foley?" he said: "No," and he creates the impression I sat here with one of my own witnesses on the stand and let him perjure himself. He says to you in summation: "Why would he put him on if he hadn't talked to him?" Well, I hadn't talked to him. The only reason I hadn't was that I was there that night when this supposed beating took place. I was there till five or six in the morning. I didn't have to talk 2355
to him or to anybody else that had been there. It never happened. There was no such thing.

They didn't know themselves that that defense would ever be injected in this case until my case was closed and I will prove it to you. Suppose they knew from the beginning that there was to be a story of beating Moore and Haughton, why wouldn't they ask Joe Brown what he knew about it? Why wouldn't they ask Banks? Why wouldn't

they ask every colored man that took the stand in succession. Why didn't they ask Shaw? Why didn't they ask Holt? Why didn't they ask Foden? Why didn't they ask when they were on the stand? No.

That all came after I stood up and said "The People rest", and then the heads got together. I can't believe that Counsel, who have acted very vigorously, with propriety in the interests of these men, would ever have let all those opportunities pass by without hammering on that theme from the beginning. They didn't know themselves until Mr. Moore took the stand.

2357 Moore didn't know how much he would say when he took the stand. He started with somebody pushing him. He got a push and later on he got kicked and then, and this is typical of his mentality, as he went along it got better and better. The first push he got was a good blow on the nose that made him bleed. He was kicked down to the floor. He was kicked terribly. He got his arm hurt. He told Dr. Hochman about it, although Dr. Hochman says that, I won't say he lies; he contradicts him. You can believe Moore if you like or you can believe Dr. Hochman.

He went further and further. I brought in
2358 some of the officers who were there, those from my office. Then he made a terrible mistake. He picked out Jim Honohan. He never was with him from the minute he entered this building and the county detectives' office until he saw him here in court.

Well, Denning is an old fellow. I guess Denning is as old as I am and he isn't as heavy, and McGarry, I don't think he is even as heavy as

Denning. You say the pair of them, but Jim Honohan, he is a rosy cheeked, young fellow. He picked out the big man and he picked out the big man in each successive group here, except Foden, and Foden was Farrell's partner and it was an angle on them.

Outside of that he did what anybody with that type of mind would do, pick out the big fellow. Holt is one. Farrell is a big, strapping man. He picked them out and his lawyer took him through this painful lie step by step.

His imagination was all right when it got going, but it started slowly. As a matter of fact, it 2360
wasn't until I had been examining him for a couple of hours, I said to him: "By the way, Moore, were you ever knocked unconscious?" Yes, he was. By jingo, he never thought of it up to then. He must have told it to his own lawyers if it were true. It seems that that being the most serious thing that happened to him, he would say something about it, but, no, they muffed that someway or other. But he was riding along then; he was well warmed up; he was confident of the impression that he was making. He was riding high. I threw it up to him and he took it. "Yes, I was knocked unconscious." "Who did it?" "Holt." One of the big ones. Holt did it. "What did he do it with?" Well, he hadn't 2361
thought that over yet. He did not know whether it was a blackjack or a crowbar or what. "His fist"; hit him up here on the top of that head with his fist. He was unconscious. Of course, he doesn't know how long.

It is significant that you couldn't pin him down to the time anything happened. I would love him to say: "Yes, this was at eight thirty Holt

beat me," so that I could show, if it were true, that the squad that Holt was with was out looking for Banks or Haughton or somebody else. No, he couldn't give you any time, but he did say when he was taken from Ryan's room and got his first beating that I came in there and stopped the beating and said to Ryan: "Come out and leave him alone." Then they brought him back to the other room.

Now, Mr. Ryan resumed the stand here, after he had been accused of kicking this fellow, and Mr. Ryan says that he phoned me just as he was
2363 about to call a Stenographer for Moore and that the first time I came to the office that night was while he was taking Moore's first statement, and Counsel, knowing full well what the change signifies between the amount of guilt he admitted in the first statement and his acknowledgment that he is the shooter and killer in the second statement, never asked Mr. Ryan one question about that. They conceded it was so.

If you ask me do I think his Counsel ever heard from him that he would say on the stand that Ryan kicked him backwards out of a chair, I will answer you "no." I don't believe either one of them ever heard it, that it was as much a surprise or shock to them as it was to me.

2364 I am sure of that and yet here is a man who says he was in on a stick-up, that the other fellow had the gun and killed an officer, and after he has completed that statement he makes another, in which he says: "No, I am the one; I did the killing; nobody else. I had the only gun." The only thing that is given to you by the defense to account for the change that he made from the first statement to his full admission of guilt as the shooter in the second, is one kick.

Now, I say that one kick might not have restored a state of fear, if it had ever been previously established, but I do say to you that if the defense were offered seriously, when the man who administered the kick came and took that stand and said: "No, I didn't," he would be subjected to the most intensive cross examination, because without the proof of that, there is no duress for this second and voluntary statement in which he is the shooter. No, sir, and I will tell you that the record says: "No questions." You recall Mr. Ryan being there: Nobody had a question to ask, although his testimony took out of 2366
this case unchallenged the only thing that constituted the appearance of coercion between the first and second statements. That is the truth. It is in the record.

Counsel said: "Why was it necessary to take him out of Ryan's room and why didn't they have a Stenographer when he was not admitting anything?" Well, in the course of the trial I put on a great many witnesses. They are all supposed to prove something, not nothing. I could have had a Stenographer give you question and answer of Moore for any length of time and I still wouldn't have any evidence in this case. If the defense contends that he didn't admit when he first came in that he was in this thing, we will 2367
concede that. Of course not.

What was he taken out of the room for? Well, there is no story before you in evidence as to the exact sequence of events that brought us to lay hands on these two on the 7th and 8th of February after the murder of December 13th, but you do know that first we got Dupree out of the Tombs

and that Dupree told you here he was in with Banks on the murder, on the burning of Moore's clothes. Later that day, we got Banks up here or Clark I guess was the next one. Clark. When I said he was with Banks, I was wrong. Dupree and Clark burned the clothes.

Then we got Clark up and Clark went into the room and he went out and Dupree came in and he went out and Moore came up from the Tombs.

Moore came up from where he felt he had a safe haven, where there was a guaranteed security from investigation, that suspicion never could point to him there. You never heard me asked 2369 him: "What were you in there for?" I don't care about that.

But out of that fancied security there came a dread knock on the door of his cell and "come downstairs," and he went down and there he met three men who brought him to The Bronx. They didn't tell him where he was going and they didn't tell him what they wanted him for, but as it became apparent to him, and it must have as that car rolled away from the Tombs and ever northward and northward, there must have come to him a sickening realization that December 13th had somehow brought its crime to light, and it must have become more and more evident to him 2370 as it crossed the bridges and came up the Concourse where he was going and why he was going, and when he came in, whatever sickening apprehension may have had possession of him, whatever fear there might have been that at last he was being brought to his just desserts, that was the only fear in that man's heart. The only pressure applied to him was that of events, the psychology of being jerked out of fancied security

and then confronted with gradually accumulating evidence.

Moore himself has said in his testimony, as he came back each time: "I only gave them what I found out they knew." Clark only gave us what he found out we knew. That's the truth. As a matter of fact, you can read the most significant statement of all, question and answer, in Moore's first statement to Ryan, when Ryan said to him, getting a little bit out of Clark, coming into him, taxing him with that and sending him out, getting in Dupree; he said to Moore; let's take this statement now. Moore had admitted a great deal by 2372
that time and you have heard this read back and forth and he said he went up to the store; he didn't know where it was; the other fellow took him. He wouldn't name the other fellow. He wouldn't mark his picture. He wasn't compelled to do anything, and, mind you, the other fellow was still out.

He didn't hand up anybody who might be an additional witness against him, anybody whose admissions might involve him. No. He didn't even want to admit that Clark had burned his clothes and he said so here, until finally he got fed up with it himself and that is something that must appeal most strongly to you Gentlemen as 2373
to whether or not he had been acting under duress, repeating a dictated story until he came to this point. I have it; I am sorry to have taken so long.

These are the questions and answers, all in succession, where first he denied that Adolph did anything with his clothes and then where he turns over and from then on changes. "Did you send Adolph to get the bandage?" "No." "Did he

bandage your arm?" "He didn't have nothing to do with it?" "What did you do with the blood stains on your clothing, your camel hair coat and your gray suit coat and your shirt." "I didn't do nothing." "Did you ask Adolph to do away with it?" "No, sir." "What happened to them?" "I don't see enough use of my holding up for him." That is his answer, which is undisputed. He said on the stand he made the answer. "I don't see enough use of my holding up for him."

After all, he is asking why should he be bothered about whether Adolph gets involved or not. Up
2375 to this time in this statement he is protecting Adolph from any participation whatsoever, although he knew Adolph had talked about him and that Dupree had and that we were getting others. He didn't put Clark into this picture and when he does, it is most grudgingly and not as a participant. Oh, no. That is something that occurred to him afterwards.

This is the Clark, the same party, Clark, that is putting him in the picture. If he is in, why don't they put him in? Is it inferred he has political pull or vast sums of money to bribe with or is he related to somebody on the staff that we leave Clark out and put Moore and Haughton in? What an absurdity when you analyze it. What
2376 were the questions and answers following that "I don't see enough use my holding up for him." "Tell me what you did." "He did go down and get the bandages and borrowed some money." "Who got the bandages?" "Adolph Clark." "Did he come back with the bandages?" "He did the best he could."

This is the same Clark he is talking about. "He did the best he could. He got some sulfa

drugs that he knew about and some band aids and some peroxide." "What happened to your camel hair coat and your shirt?" "Adolph told me he would get rid of them." "Did he take them from your home?" "Yes." "Did you ever see them again after that?" "I never saw them again." "What did he say he did with them?" "He said he burned them and then he told me stay in the house a couple of days and so on."

Why, that is where the break came in that case. He really began to open up. That is the story that tells you Clark was never in this thing. It is the explanation of why I can't get evidence that 2378
would put Clark in where I would gladly see him. Clark wanted to come on this stick-up. Clark started to come on this stick-up and I told you in my opening I don't know why he didn't come. One story is he didn't have the carfare. Maybe they were busted. They waited for the last hit on the numbers and nobody got anything. After the last number they were busted.

Moore went and got the gun and they all started. They tell me, Moore tells me and Haughton they left him home because they were going to see some girls up here and there were only two and they didn't want him along. I don't know why he stayed home and I don't care. It doesn't interest me. I am only interested in this, 2379
that he wanted to come up and he didn't get here.

Now, some of these things that sound so fine when they roll off the tongue uncontradicted really seem to be absurd when they are put to the test of logic. How much longer do you want me to take, your Honor?

The Court: It is up to you.

Mr. Foley: I am very nearly through with the first one. The second dovetails very largely.

The Court: You are entitled to answer the two attorneys.

Mr. Foley: Now, Counsel called your attention and it is in line with some of the things that went on through the case; Clark said to Counsel for Moore: "Well, I began to open up when they hit me with that question." He knew when he went in that Moore had been talking to Ryan. Ryan was getting some information: "When they hit me with that one, I opened up a little." Counsel: "Oh, they hit you." An objection. He said:
2381 "All I heard was 'they hit me'." Well, you all heard the witness say here: "He hit me with a question."

That is one way of handling matters, if he had known at that time when the witness had said "I was hit with a question," and by the way, the witness volunteered the information: "No; I wasn't hit. They didn't hit anybody that night." That is in the record too. That was something drawn out by Defense Counsel when he said: "I want you to notice this discrepancy. I want you to notice those differences and then see if there is any significance in them."

He said: "When I had Shaw on the stand I
2382 made him admit that Ryan stood about two feet from Moore when he read his testimony. When I had Ryan here, Ryan said no. Then Shaw said that he is mistaken." Counsel said to you with all appearances of sobriety and sincerity: "Remember, weigh that carefully. It isn't so much, but it just shows you." It is like testifying whether or not Mrs. Ellis got out of the car.

Mrs. Ellis said she got out. One of the detectives said no, he thinks she didn't. Whether she did or not, I don't know and I don't care, but if that is important in this case, I am wrong about it.

Mr. Wilkinson did say to Shaw: "Where was Mr. Ryan seated or standing when he was doing all this reading?" He said: "He was seated part of the time; standing part of the time." "How far away from George Moore was he?" "A couple of feet." "A couple of feet?" "That's right." "And on occasions he standing, you say?" "Yes, he got off his chair." "Did he raise his voice?" "Never did." "Are you sure of that?" "Positive." 2384

Well, that is what he calls a contradiction between Ryan and Shaw, but in his own examination on the next page, and I assume he must have some familiarity with his own questions and answers, with the same witness he says: "He was only standing two feet from Moore, wasn't he?" and Shaw says: "He was sitting at his desk. Moore was on one side of the desk, at the corner of the desk. Mr. Ryan was sitting on his chair, the swivel chair, facing toward Moore when he was reading. When Moore wanted to make a correction, Mr. Ryan got up a couple of times and came closer to Moore."

Counsel said: "If you find any significance in 2385
such discrepancies, weigh them carefully." I say to you if you find any intent to mislead you or to misconstrue, weigh that carefully and judge all the rest of the contentions and strategy by the same standard.

Now, he has also said about my not getting Moore to show his arm that I tried to get an inference before the Jury I knew it wasn't a

bullent wound. "Foley knows Moore has no bullet wound in his arm, but he tried to get an inference across to the Jury." Well, I am not going to characterize that. I only know what Hochman told me about that wound, the same as yourselves, but as for Counsel's remarks about what I know and what I have tried to do, I tell you as the District Attorney of this county that if you believe that I have in the trial of these two men any single time tried to bring home to your minds an inference concerning their guilt that was not warranted by the evidence, then you had better dis-
2387 trust every argument I have put to you and acquit them both, if you find that I have once done that in the course of this trial.

Now, counsel evidently didn't think that Moore's alibi was anything of importance, because he didn't mention it. Moore put in an alibi. He is beaten, he is punched, he has a phony lawyer, who disappeared, by the way, in Moore's case. He was never mentioned by Counsel. That just went up in smoke somehow. He never materialized. We never heard of him anywhere except in Moore's alert mind. The lawyer has disappeared. The alibi has disappeared. Do you believe that Moore told Ryan on February 7th: "I
2388 was not in The Bronx December 13th. I was downtown in a crap game, getting stabbed and stabbing somebody," and it is a fine reflection on his character, habits and mentality that with all the time he had to think over where he might have been between the 13th of December and the 7th of February, he can't think of any place where he would likely be except in a knife fight in a crap game.

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However, you have in the record testimony to the effect that when we were provided with an abili by suspects we ran it down. You had Holt over in Jersey. Counsel said: "Did you bring the men back?" "No, I brought back their pictures though." "Did you show them to Shaw?" "Yes." "Did he say they were the men?" "He said they were not." "That ended your investigation?" "Oh, no. We checked up and found that what they said was true. They were in Jersey and not in New York and then we dropped the case."

If Moore had said: "I was with Joe or Artie or Packard on the night of the 13th," if he had told that to us on the 7th, we would have sent out all those detectives to round them up and prove it one way or the other. We didn't want a wrong man. This was no witch hunt. This was a case that was worked with all the energy and skill that we possessed to a definite conclusion. We didn't want a solution. Nothing would ever satisfy us except those men who are here at the table. Out of all the hundreds of others, those are the ones. If was all sifted and the chaff has been separated fr n the wheat. Those are the men that we looked for all that time.

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These are men who have injected something new into a defense. Not the beating in the back room of a police station; this occurred in the office of the District Attorney. Counsel would have you believe that when Haughton was to make his statement and the detectives were ordered out of the room, some fresh detective said: "Remember what I promised you;" said it in the presence of the Police Commissioner and the Inspector and the District Attorney and the First Assistant. That would be something new in their deportment around the place.

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However, this was a man hunt. The evidence of the work done is there in that huge bundle of D.D. 4s and 5s you saw. The evidence of it is in Shaw's statement that he looked at, there must have been hundreds. Out of his place at the wee hours of the morning and at midnight, to the District Attorney's office three or four or five times. Were there suspects? Did some of them look good? Of course they did. Yes, we examined. We examined thoroughly. We examined conscientiously. We never let go, but we did get a break and there it is.

2393 Clark wasn't enough. Is Clark an accomplice? Yes, Clark is an accomplice. Was he promised anything? No, he was not. If I didn't have to promise them anything to get the confession, why would I promise Clark anything, who is not even in my county, to testify?

What went on between the first and second confessions with Moore? You have heard me ask him: "Did we talk about God; did you talk about religion; did you talk about conscience?" He barely restrains his impatience. The answer I got from him and it is in the record: "Conscience, that is all you talked about all night." That is in the record. That is his answer. You heard him make it.

2394 Do you talk conscience to a man that is being beaten into submission? Why bother talking anything to him if you are beating a story out of him? Tell him what to write and that is the end of it. You don't talk conscience. "You talked it all night, you and your conscience." That touches most everything in the case, but I want to take up now what Counsel has said in behalf of Haughton. May I have a moment, your Honor?

(Mr. Foley confers with Mr. Delagi.)

Mr. Foley: Well, we were talking about the alibi. The alibi is a joke. It was stuck in as a sort of red herring, simply to take a snatch at it and that is the end of it. It is as silly as the other alibi where the son comes up and testifies and the sister-in-law and the mother-in-law and wife and every body else don't bother. He is only on trial for murder, so they just don't come up; that is all. That is the end of that alibi. What that was stuck in for, I don't know either.

Well, here is the same old story. You have got to take the life of the fellow. I don't take his 2396
life. Neither do you. You bring in a verdict. I present a case. I leave it with you and you bring in a verdict and the Court does the sentencing and then he goes to Sing Sing and they have an executioner in Sing Sing.

"Cop killer; there is an unwritten law in the Police Department that a cop killer shall not go unpunished." I don't know what he meant by that. Here they say: "Cop killer shall not go unpunished and the Police Department was not interested in solving the Burke case." There never could have been anything further from the truth than that. The D.D. 4s and 5s showed you whether we were interested or not, and when I say we, put me right in with the Police Depart- 2397
ment too, put me as one who lives their life and shares their problems, and is happy if there is an opportunity to share any of their problems, a man who has great and deep respect for them as a fine class of men who serve us well. I have worked with them for twenty-two years and I am pround of my association with them.

When anybody stands up here to color your mind so that your thinking may not be accurately and straightly and logically directed to a verdict that is based on evidence and says the Police Department wasn't interested in solving the Burke case, that takes high honors for absurdity.

I brought Shaw on four occasions. Well, if they said I brought Shaw on forty occasions to look at people, I wouldn't dispute it. It isn't in the evidence, but if they said forty I wouldn't dispute it, because I would agree. Shaw looked at hundreds. Sure.

2399 So the Police Department resorted to the rule of the mob. Never mind the right fellow. Just get somebody to pin this thing on. The rule of the mob. Why, there is a very contradiction in his own statement on the amount of the work that was done, the hundreds that were looked at, and resort to the rule of the mob. Why, they can't both be true. If we weren't looking persistently and patiently and conscientiously for the right men, we would have taken any of the first hundreds we sifted. That is common sense. We didn't. We didn't.

We worked and we worked and we worked. The weeks went by and it wasn't the rule of the mob and there was nothing that was too much to
2400 be done, no rumor too weak or indefinite to be run down.

Counsel doesn't know that Clark went up and fire the shots on December 13th. Well, Moore knows; Haughton knows. They later told me. I don't know, except from what they told me. I am not going to say when Haughton says: "I stayed downtown and they went up," that I believe that, but when they tell me that they left him down there, that is as far as I can go.

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If Clark was there, at least we know only two entered the store. If he was out as a look-out, if they had a fourth man somewhere in an automobile and things happened too fast for them to get back to them, if there is anything like that, if there are more I can get in, I will be delighted to receive the evidence; delighted. I would like nothing better.

Did Shaw identify Haughton? No, he never did; never did, and if you say that Moore isn't light skinned, that is apparent to the naked eye. Shaw came out from under that counter. He doesn't know when. He doesn't know how long 2402
he was under it. He doesn't know how many shots he heard. It was a terrible experience, coming out of a clear sky to a businessman, and when he does come up, there is his friend Burke or a police officer he had come to know, lying there.

You have heard the description of the interlocking wounds that tore the crown out of his head. That is an experience and the first fellow in said: "What do they look like?" Well, he said one of them was light skinned. He thought it was the shooter. If he did, he was wrong. This case doesn't depend on any identification of George Moore.

This case depends upon George Moore's free 2403
and voluntary confessions, two of them, plus the overwhelming corroboration that has built up, the story of how he disposed of his clothes and who was present and why they did it; the story of how the gun went back through that same sinister channel to where we found it. The case against him is riveted by science itself, when

Butts takes that gun that was in Moore's possession on that night and links it with the bullet that Dr. Hochman took out of Jim Burke's body. That is the case against him.

I never asked Shaw did he identify him. I don't care whether he could or not and I don't care whether he could identify Haughton and I don't care whether the descriptions were good or not. If we had been going on those descriptions that were recited to you, we never would have had these men, but we have got them.

Counsel has said to you that if a confession is
2405 obtained by force and involuntary, it should be disregarded and it is more important to determine whether a confession was voluntary and properly admissible than it is to determine the guilt of a murderer, and Counsel is right. I believe in that with all my heart and soul. There is no restriction. There is no limitation in my mind about the soundness of that contention that he has made here, that it is important to you and to your children that this man, wheher he be black or white, do not have used against him a confession that was extorted from you.

That is the end of all our guarantees if that can be done. The smallest start on that basis might lead to a complete denial of liberty to all
2406 of us. If you think that these confessions were extorted, you act accordingly, and with Haughton that means acquittal. Your rights and mine are the things that our men fought for, that we fought for in the last war, the early one. It all boils down to those guarantees being made something live and sacred that you can rely upon. There is no safety for anyone if they be destroyed. You go back to the days of the torture chamber, but

also while I in no sense qualify my deference or my belief in those principles and I am entirely sincere when I urge them upon you, yet I want you to reflect as common sense business men that in this case, with one witness after the other showing the chain and the connection, the destruction of evidence of guilt, the location of the gun, the scientific proof that this gun we got through Moore's information did match the bullet from Burke's body, that there was nothing left to a desperate defense but the defense of beating and coercion.

There is nothing left in the world and they say 2408
we anticipated it. Ordinarily, I would expect them to come in with that. We are not new to this phony defense. Juries have many times decided whether they believed it or not. You can't believe it, but I do say this: If in conscience you believe it, you acquit. Never have it upon your soul to live with that if you believe the story these men have told here, if you believe that the police and the District Attorney and the citizens are all involved in a huge conspiracy to send innocent men to the chair, if you believe it and you don't act according to your consciences, you will regret it all your lives, if you have a conscience.

If these men testified through fear I tell you 2409
that it was fear inspired by their having been finally brought to book, for something that the days had begun to put a little further and further away from their active recollection. December 13th was gone by. We are getting on into February and then the dread hand of the law comes down.

They opened the door of Mr. Haughton. They used bad language. How would you go in to

bring him out, a man that was the partner of the fellow that killed your own partner, men from Jim Burke's squad? His father I thought was a fine decent man, of whom you will recall I asked no questions. Why should I? I think he was honest. I think he bears a heavy burden in this son.

Whether the other son is any good or not, I don't know. I don't infer that he isn't. I never even asked him: "Have you got a record? Step down; no questions. Get on with the case. Let's finish it." He said he knocked down with a gun
2411 butt. His dad doesn't say that. He said he got hit with a gun inside. Well, he was told to sit there with his hands on his knees and probably somebody also told him to get dressed. He couldn't do both at the same time, but whoever was charged with watching him saw him reach for his breeches. Well, he said he hit him on the head with the gun. That doesn't make sense, but the father won't say he saw that. He said he was in the room. He saw the boy straighten up, and the only other time he got hit was when they say the colored woman was out of the car, the policewoman.

Now, that is the sum total of the beatings that are alleged to have happened and they are all
2412 denied. His dad said his head came back inside the door with a gun in front of it. He heard him cry out, a gasp or something. There is no testimony but his, and after all, Gentlemen, you in some sense participate in an investigation yourselves. You sit there and you hear the question and answer and you heard Haughton confess upon the stand. We got tangled up about Ryan didn't insist on what subway Moore came up on.

Did he tell you it had to be the Eighth? Did he tell you you got off at 170th Street and did Ryan then say "and Jerome Avenue?" and did you say: "Where the Eighth Avenue stops." "Did you put that in yourself? How did you come up?" and he answered: "I came up on the Eighth Avenue." You heard him and about a minute later he said: "So he said." That was too apparent. After all, you don't have to be Sherlock Holmes or you don't have to spend thirty-five years trying cases to know that somewhere there is an open break, a mistake, a clear indication that tells the man not trained in the law, the lay 2414
man, the business man, whether or not the truth is being given to him.

Now, I have gone much further beyond time than I wanted to. I would still insist and impose upon you if I felt that almost everything worth while has not been answered. If I have missed anything, I am sincerely sorry, because this means that I have come to the end of a long and arduous task that began alongside the body of Jim Burke on the night of December 13th.

I haven't talked to you about the man. I haven't played upon your sympathies nor am I going to, but when Counsel said to you: "Remember, these fellows are men," so was Jim Burke. He was a man. Twenty years a detective up here, right in the one house. You can 2415
imagine whether in my twenty-two years in the office I had come to know him well or not.

Is there anything in the record that he was an intelligent member of the department and an officer of good character? Yes, there is. He got in the bureau within two years after being in the department and he stayed in it for twenty years.

He was a first-grade man when he died. He stayed in one house all that time. We never had a complaint. We wanted him there.

This was no clumsy rookie assigned to this plant. When Dinan and Burke talked this over, they knew where they ought to be that night. That is their business. Lots of time we guess wrong. Lots of times we get a break. He was there on the right spot, but he never reached his second gun, and the man who killed him came there with a man who had picked that place out to stick it up. That is the truth. That is in the
2417 evidence. That has been proven beyond all shadow of doubt. He came there with a man who had picked it out, that pointed it out to another, this accomplice Clark, and had discussed it, and when the last number went up and nobody hit, then Moore went and got his gun and came back, and that is the truth.

They came up together, Haughton leading the way where Moore didn't know his way and then Moore, confronted in the store with Shaw said: "Get in the back," and when he didn't move he showed him the gun. He started to raise his hands. "Keep your hands down. Go in the back," and he followed him in the back to where those cases were piled high by Jim Burke for the specific pur-
2418 pose of concealment, and he met Burke coming out and what transpired immediately after that, we will never know probably, except that Burke somehow, in spite of head wounds, did succeed in emptying his gun six times and George Moore shot him five or six times. He fired at him seven shots out of a forty-five automatic that took the officer's life then and there, seven shots from a weapon that does not go on repeatedly firing

once you pull the trigger; seven different deliberate operations. That is what they are charged with.

The evidence adduced against them I forecast for you in my opening and I contend now in conclusion that I have proven this crime step by step exactly as I outlined it to you in the beginning, that it has been proven scientifically, beyond any reasonable doubt, beyond any controversy, and now I am through. That part of this case that was mine that began with this investigation that night in the liquor store and ends for me only today, that part, the seeking out, the marshalling, 2420
the preservation and the presentation to you of that evidence, is all over and I pass on the burden in this case now to you.

It is a serious matter. I take it seriously. I can find in my heart no vindictive anger towards these men. That can't be there if you want to prosecute in good conscience. Vindictive anger, no, but a grim determination to do everything in my power to bring them to book and in this case that means the chair. Yes, I am dedicated to that with all my heart and mind, because I am convinced of the justice of my case. That is not personal. That is official.

You have a solemn obligation to live up to. You 2421
have a hard and an arduous duty. It is not pleasant for lay men, who are not mixed up in this business of mine and the business of the police, who have not spent long years, questioning and handling fellows like these defendants, to make up your mind to bring in a verdict which must bear serious consequences, but you are citizens and you have an oath just as I have and you have

a duty and you are expected to perform it as conscientiously as I think I have performed mine.

The Court will give you the law. You have said that you will follow it. You have each one of you said to me: "I will bring you in at the end of this case a verdict based solely upon the evidence, the legal evidence in the case, a verdict that I can justify in conscience and one that is not influenced by sympathy or by prejudice."

That verdict I now ask of you and I ask that it be murder in the first degree against George Moore, who shot and killed the officer, and I ask
2423 that it be murder in the first degree against Lester Haughton, who found the place and brought Moore to it, and I ask that in each instance you bring it in as it should be brought in, with no recommendation of clemency whatsoever.

The Court: Mr. Foreman and Gentlemen of the Jury, you are admonished by the Court not to discuss the case. Form no opinion until the matter is submitted to you by me. I will ask a favor now. Take about an hour and twenty minutes for your lunch. I don't mean by that to hurry back. I want about an hour and twenty minutes myself.

(The Jury retires from the courtroom.)

The Court: Remanded. Recess till three fif-
2424 teen.

2425

The Court's Charge.

(After Luncheon Recess.)

The Court: Mr. Foreman and Gentlemen of the Jury: This is a criminal action prosecuted in the name of the People of the State of New York against these defendants, George Moore and Lester Haughton, for the crime of murder in the first degree.

It now becomes the duty of the Court to instruct you in the law which must govern you in this case. You are required to take the law from me without question and with implicit obedience. The only law that you are to apply to the facts 2426
in this case is the law expounded to you by me. If you have any notion of your own as to what the law should be in this case, or if you disagree with the law as presented to you by me, you are under your oath bound to disregard your own notion and to accept the law as I enunciate it for you.

You must keep in mind, gentlemen, that these two defendants are being tried together. In effect, you are trying two cases at one and the same time. You are called upon to consider the case of each defendant separately, because you are required to render a separate verdict as against each defendant. In your consideration of the evidence in this case, you must keep that con- 2427
stantly in mind.

The Grand Jury of this county indicted the defendants, George Cornelius Moore and Lester Haughton, for the crime of murder in the first degree on the 11th day of February, 1947. The indictment charges that these two defendants, while acting in concert and together, did, on the 13th day of December, 1946, with force and arms,

wilfully and feloniously and with malice aforethought, make an assault upon James M. Burke, by shooting him with a revolver and thus causing a mortal wound from which he died.

An indictment is an accusation in writing presented by the Grand Jury to a competent court, charging one or more persons with the commission of a crime. The indictment in this case is not proof of the guilt of either of these defendants, nor is it to be considered by you as any evidence against either of these defendants. It is merely an accusation.

2429 The specific charge against these two defendants is that on December 13, 1946, while acting together and in concert in an attempt to commit a robbery upon the person of Richard Shaw in premises 1439 Webster Avenue in Bronx County, they killed James Burke, who was in the premises at that time. The charge is that they killed Burke while attempting to rob Richard Shaw.

When arraigned in court on this charge, each of the defendants entered a plea of not guilty. Each denied the charge contained in this indictment, and thus the case is now presented to you for your determination.

Under our law, all persons charged with crime are presumed to be innocent until their guilt has 2430 been established beyond a reasonable doubt. This means that when a person is charged with the commission of a crime, he is not bound to prove that he did not commit that crime, but the prosecution must prove beyond a reasonable doubt that he or they did commit it.

Each defendant is entitled to rest upon the presumption of innocence in his favor. A defendant is at no time required to prove his innocence.

The burden of establishing the guilt of each of these defendants beyond a reasonable doubt rests upon the prosecution, and that burden never shifts.

If, however, the prosecution produces evidence which rebuts the presumption of innocence, and if the evidence in the case convinces the jury of the guilt of either or both of the defendants beyond a reasonable doubt of the crime charged in the indictment, then the presumption of innocence ceases to exist and the jury must then render a verdict of guilty as charged.

This presumption of law inures to the benefit 2432
of all defendants charged with crime. It was designed for the protection of innocent men. It was not designed as a bulwark behind which guilty men might hide.

The guilt of each of these defendants must be established beyond a reasonable doubt. A reasonable doubt is a doubt based upon reason. It is a doubt for which a juror who says he has a doubt about a defendant's guilt can give a reason for entertaining it, if called upon to do so.

A reasonable doubt is not a mere guess or surmise that the accused may not be guilty. It is not a doubt based upon a whim, caprice, prejudice or sympathy, or the reluctance of a juror to perform a disagreeable duty. 2433 It is a doubt that must be based upon reason, and must arise from the evidence or lack of evidence in the case.

If you are satisfied to a moral certainly that these defendants, or either of them, are guilty of the crime charged, you may safely say that you have been convinced beyond a reasonable doubt. If your mind is wavering, or if you are uncertain and not convinced to a moral certainty

of the guilt of either or both of these defendants, you have not been convinced beyond a reasonable doubt and must render a verdict of not guilty accordingly.

The People are not required to prove the guilt of a defendant beyond all possible doubt.

In this case, as in most criminal cases, there are two kinds of evidence: direct and circumstantial. Direct evidence is where a witness testifies as to what he sees, hears or observes, something which he knows of his own knowledge, something which comes to him by virtue of the senses.

2435 Circumstantial evidence means simply that you take one fact or set of facts, one circumstance or set of circumstances produced before you by evidence, and from those facts you reason to a conclusion. The law makes no distinction between direct evidence and circumstantial evidence. All that the law requires is that the guilt of a defendant or defendants be established beyond a reasonable doubt.

I shall now define the law applicable to this case: The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed without design to effect death, by a person engaged in the commission of or an attempt to commit a felony, either upon

2436 or affecting the person killed or otherwise.

The words "or otherwise" in that statute have significance and meaning. It means the killing of anyone during the commission of a felony or an attempt to commit a felony. It means that if a person while engaged in the commission of a felony or an attempt to commit a felony kills anyone, he is guilty of murder in the first degree.

Intent or premeditation and deliberation are not necessary elements of the crime of murder in the first degree, when the murder is committed by a person or persons engaged in the commission of a felony or an attempt to commit a felony.

The law is simply this: A person or persons who kill another while engaged in the commission of a felony or an attempt to commit a felony is guilty of murder in the first degree, and nothing else.

The law which provides that a person engaged in the commission of or an attempt to commit a felony, and while so engaged kills a human being, is guilty of murder in the first degree, is founded upon sound public policy. 2438

A person or persons who engage in the commission of or an attempt to commit a felony is chargeable with express malice, and if, while so engaged, he or they cause the death of a person, even though unintentionally, the Legislature has seen fit to enlarge the crime and make it murder in the first degree. The law takes into consideration the crime in which the slayer was engaged in committing, and it declares that the taking of a human life by a person or persons so engaged is as grave an offense as the intentional and deliberate and premeditated killing of one human being by another. 2439

A person or persons who engage in the commission of or an attempt to commit a felony do so at their own peril, and if he or they kill another while so engaged they are guilty of murder in the first degree.

I shall now define robbery for you. "Robbery is the unlawful taking of personal property from the person or in the presence of another against

his will by means of force or violence or fear of injury."

Robbery is simply a larceny or the taking of personal property from the person or in the presence of another against his will, accomplished by the use of force, fear or violence.

Robbery in the first degree is the unlawful taking of personal property, if accomplished by force or fear when committed by a person being armed with a dangerous weapon or being aided by an accomplice actually present.

I charge you as a matter of law that a gun is
2441 a dangerous weapon.

It is not contended in this case that the defendants committed an actual robbery. The People contend in this case that the defendants, acting in concert and together, attempted to commit the crime of robbery in the first degree upon the person of Richard Shaw, in premises 1439 Webster Avenue, on the night of December 13, 1946.

The Prosecution contends that they were prevented from completing the robbery and carrying it into full effect by the presence of and the intervention of Detective Burke, who was killed at that time. The People contend the presence of Detective Burke interrupted and prevented these
2442 defendants from stealing the personal property of Mr. Shaw.

An attempt to commit the crime of robbery under our law is a felony. An attempt to commit a crime is defined as follows:

"An act done with intent to commit a crime and tending but failing to effect its commission is an attempt to commit that crime."

An attempt is an endeavor to do a certain criminal act, but which falls short of execution.

Intent to steal is a necessary element of the crime of robbery and of the crime of an attempt to commit that crime, and must be established beyond a reasonable doubt.

Under our law, a person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime is a principal.

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Under this definition, if two or more persons engage in a common enterprise, the ultimate purpose of which is to commit a felony, and death to another results in carrying that conspiracy into effect, it does not matter who fires the fatal shot. When two or more men are engaged in attempting to commit a robbery, and in so doing a human being is killed by one of the conspirators, all are equally guilty of that killing.

All engaged in the common conspiracy are equally guilty of the act under the law. Each conspirator is liable for the acts of every associate conspirator done in the furtherance of the object of the conspiracy. Each conspirator is an accomplice in each of the acts committed in pursuance of it.

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Once a conspiracy to commit a crime is formed, the act or acts of every conspirator is binding on his co-conspirators if the acts are done in pursuance of it. Of course, there can be no criminal responsibility for anything done by any of the conspirators not fairly within the common enterprise. A conspiracy may be inferred not only

from the words, but from the acts and circumstances as well.

I desire to emphasize that evidence of any statements made by either of the defendants after the conclusion of the alleged crime, or any evidence of acts done by any of them after the conclusion of said crime, is admissible, and was received in evidence only as against the defendant who made the statement or against the defendant who performed the act. It must be totally disregarded by you in your consideration of the case of the other defendant.

2447 Applying that last propositon to this case, you are instructed that whatever Moore is alleged to have said or done, after the commission of the alleged crime, was received in evidence only as to him. It was not received in evidence as to the defendant Haughton and must not be considered by you in your deliberations as to him. Whatever Haughton is alleged to have said or done after the commission of the alleged crime was received in evidence only as to him. It was not received in evidence as to the defendant Moore and must not be considered by you in your deliberations as to him.

To establish the guilt of the defendant Moore beyond a reasonable doubt, the People rely upon
2448 the testimony of Shaw, Clark, Banks, Brown, Dupree, Askew, Detective Foden, Sergeant Butts, Salmore and Ryan, and the confession of the defendant Moore in evidence.

To establish the guilt of the defendant Haughton beyond a reasonable doubt, the People rely upon the testimony of Shaw, Clark, Salmore and Ryan, Sergeant Butts and the confession of the defendant Haughton in evidence.

In every prosecution for homicide, the law requires proof of the death of the deceased. No person can be convicted of murder, unless the death of the person alleged to have been killed is established by direct proof, and the fact of the killing by the defendant or defendants is established beyond a reasonable doubt.

The People must establish to your satisfaction beyond a reasonable doubt:

First, that James Burke is dead.

Second, that he met his death as a result of some criminal agency; in other words, that he was killed. 2450

Third, that on December 13, 1946, the defendants, Moore and Haughton, acting together and in concert, were engaged in an attempt to commit the crime of robbery upon the person or in the presence of Richard Shaw in the liquor store at 1439 Webster Avenue.

Fourth, that James Burke was killed by the defendant Moore while these defendants were engaged in attempting to commit that robbery; that Burke was killed by Moore while the attempt to hold up Shaw was in progress.

Each proposition presents a question of fact for your determination. If the People fail to establish any or all of these propositions as to either or both of these defendants, or if you entertain a reasonable doubt as to any or all of these propositions, such defendant or defendants as to whom the People fail or as to whom you entertain a reasonable doubt must be acquitted. 2451

It is not disputed, as I understand it, that James Burke is dead or that he met his death as the result of some criminal agency. It is not disputed that he was killed.

The People contend that these two defendants entered into a conspiracy to commit a robbery in the liquor store in premises 1439 Webster Avenue; that, in pursuance of said conspiracy, they came to the Bronx on December 13, 1946, at about 5:30 P. M., entered the said premises, and at the point of a revolver ordered Richard Shaw, husband of the proprietor, to the rear of the store; that, as Shaw was being forced to the rear, Detective Burke came from the rear and intercepted them; that shots were fired by Detective Burke and the defendant Moore, and that Detective
2453 Burke was killed by the defendant Moore.

The People point to the testimony of Adolph Clark to the effect that about a week prior to December 13, 1946, he and Haughton were in the Bronx and looked over the liquor store in question and decided that it would be an easy place to take over; that on December 13, 1946, he, Haughton and Moore discussed the proposed hold-up, and decided to come to the Bronx and hold up the place; that he thought Moore had a gun; that the three of them started for the subway to come to the Bronx; that when they reached the subway, he did not have carfare, and that Haughton and Moore went on alone; that between 7:30 and 9:00 P. M. on December 13, 1946,
2454 he went to Moore's room at 336 West 136th Street and saw that the defendant Moore was wounded; that at Moore's request he went to Joe Brown's home, and together they went to a drug store and purchased bandages and peroxide which they brought back to Moore's room and dressed his wounds; that Moore told him that he thought he had killed a man in the hold-up, and asked him to get rid of his overcoat, jacket and shirt; that

Moore also told him that he gave the gun to Haughton after the shooting; that on December 14th he met Haughton, who gave him the .45 caliber automatic; that on the following Monday or Tuesday he met Harold Dupree, and together went to a basement next to a barroom and burned the clothing he had received from Moore.

I charge you as a matter of law that Adolph Clark is an accomplice. In other words, I say to you as a matter of law that Clark, by what he did before and after the commission of the alleged crime, was an accomplice of Moore and Haughton in the commission of the crime charged 2456
in the indictment in this case.

A person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime is an accomplice.

No conviction can be had upon the testimony of an accomplice, unless the testimony of the accomplice is corroborated by some other evidence. In other words, if Clark was the only witness who appeared in this case against these defendants, the Court would be obliged to dismiss the indictment and discharge both of them. 2457

The law with respect to that is defined as follows: "A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to connect each of the defendants with the commission of the crime charged."

The corroboration or the corroborative evidence must meet the following requirements:

First: It must come from an independent source; that is, from another witness or witnesses.

Second: It must be evidence of a material fact.

Third: It must tend to show that the crime charged was committed and that the defendants were implicated in its commission.

The law does not require that the whole case be proved by witnesses outside the testimony of the accomplice. The law does not require that
2459 the corroborative evidence standing alone and by itself must show the commission of the crime; nor does it require that the corroborative evidence standing alone and by itself show that the defendants were implicated in it. Such a rule would render the testimony of an accomplice in most cases unnecessary, and would deviate from the policy of the law which permits the use of accomplices as witnesses in aid of and in the interest of public justice.

To state the law again: The corroborative evidence must come from an independent source. It must be evidence of some material fact tending to show not only that the crime charged has been
2460 committed, but that the defendants were implicated in it.

The People point to the testimony of Otis Banks to the effect that on December 13, 1946, about 3:00 P. M. he gave the .45 caliber automatic to the defendant Moore; that on December 14th or 15th he saw Moore at his home, at which time Moore told him he was shot in a stick-up; that at the time Moore's left arm was bandaged; that Moore first told him that he got rid of the

gun, but later told him that Clark had the gun and that he, Banks, recovered it from Clark in the latter's room.

As to the witness Banks, the Court leaves it to you to determine as a question of fact whether or not he was an accomplice in the crime charged in the indictment.

The People contend that Banks is not an accomplice in the commission of the crime charged in the indictment; that notwithstanding he loaned the gun to Moore, he was not present at the time Burke was killed; that he did not enter into a conspiracy with Moore, Haughton and Clark to commit a robbery; that he did not aid and abet in its commission, and that he did not directly or indirectly counsel, command, induce or procure Moore and Haughton to commit a crime. 2462

The defendants contend that, by lending Moore the gun and his subsequent acts, he was an accomplice in the crime charged in the indictment.

A person is not to be termed an accomplice, unless he intends to participate in the commission of a crime. A man may by his action aid and abet in the commission of a crime, but, unless he does so intentionally, he is not an accomplice. To constitute one an accomplice, his acts must be voluntary and intentional. A man is not to be termed an accomplice merely because he had knowledge of the intended commission of a crime, unless he in some way aids and abets in its commission with intent to do so. 2463

If you determine that Banks was not concerned in the commission of the crime charged in this indictment, that he did not aid and abet in its commission, that he did not directly or indirectly counsel, command, induce or procure Haughton

and Moore to commit the crime charged, and if you determine that he did not intend to participate in the crime charged, he is not an accomplice.

If you determine that Banks, by lending the gun to Moore and thereafter giving it to Askew for a $30.00 loan, is an accomplice, then his testimony must be corroborated by some other evidence which tends to connect these defendants with the crime charged in the indictment.

On the other hand, if you determine he is not an accomplice, then his testimony need not be
2465 corroborated and you can give his testimony such weight as you believe it to be entitled to, in the light of all the circumstances in this case.

If you find that he is an accomplice, then his testimony cannot be considered by you as corroborative testimony of Clark's testimony. If you find that he is not an accomplice, then his testimony may be considered by you as corroborative testimony of Clark's testimony.

The People contend that there is corroboration of Clark's testimony and Banks' testimony; that there is testimony other than that of Clark and Banks which tends to connect the defendant Moore with the commission of the crime charged in the indictment.

2466 In support of this contention, the People point to the testimony of Richard Shaw to the effect that on December 13, 1946, Detective Burke arrived at Shaw's place of business about 5:15 P. M.; that thereafter, and about 5:45 P. M., two men entered the store; that he thought they were customers and approached them; that as he got near them one of the men ordered him to the

back; that he hesitated a moment when one of the men pointed a gun at him; and he put his hands in the air; that he was ordered to put his hands down and walk to the rear; that as he was walking to the rear, Detective Burke appeared and he, Shaw, then threw himself to the floor behind the counter; that immediately he heard shots and the men ran out; that he got up, saw Detective Burke lying over some boxes, and that he called the police; that he was in the District Attorney's office on February 7th when the defendants Moore and Haughton were questioned by Mr. Ryan about that crime, and that each of them 2468
confessed that they attempted to hold up and rob the proprietor of the liquor store; that while in the District Attorney's office he sat next to the defendant Moore for about twenty minutes, and that Moore recognized him as the man in the store on December 13th, and that Moore said to him that he, Shaw, was lucky, that if he had used him as a shield he would have been killed; that after Moore recognized him, he identified Moore as the man who attempted to hold him up.

As to the defendant Moore, the People point to the testimony of Joseph Brown to the effect that on December 13, 1946, he and Clark bought bandages and peroxide at a drug store, and then went to Moore's room and saw his arm in ban- 2469
dages; that Moore told him he was shot in the stick-up, and that he shot the man; that subsequently Moore came to his house and washed his wounded arm, and again talked about the stick-up, and that Moore said Friday, the 13th, was his unlucky day.

As to the defendant Moore, the People point to the testimony of Harold Dupree to the effect that

after burning the clothing, he met Moore and Clark; that Moore told him he got shot in the arm and that he shot the cop.

As to the defendant Moore, the People point to the testimony of Detective Walter Foden to the effect that on February 8th he picked up Otis Banks and brought him to the District Attorney's office and confronted him with Moore; that Moore then said to Banks, "I am in trouble; don't you get in trouble. I told them the whole story. All they want from you is the gun. Tell them where the gun is;" that he, Foden, then went with Banks
2471 and recovered the gun in the home of Askew and brought it back to the District Attorney's office, and that Moore identified it as the gun he had used in the liquor store on December 13, 1946.

As to the defendant Moore, the People point to the testimony of Salmore and Ryan to the effect that when questioned in the District Attorney's office, he made a confession of his participation in the crime charged.

As to the defendant Moore, the People point to the testimony of Sergeant Butts to the effect that he compared the bullet taken from the body of Detective James Burke with test bullets fired from the .45 caliber automatic, and to his testimony that the bullet found in Burke's body was
2472 fired by the .45 caliber automatic gun which is in evidence in this case.

Now, it is for you to say whether the evidence relied upon to corroborate Clark and Banks in this case is sufficient, and whether it tends to connect the defendant Moore with the commission of the crime charged.

The People contend that there is corroboration of Clark's testimony; that there is testimony,

other than that of Clark, which tends to connect the defendant Haughton with the commission of the crime charged in the indictment.

As to the defendant Haughton, the People point to the testimony of Salmore and Ryan to the effect that, when questioned in the District Attorney's office, he confessed his participation in the crime charged, and to the testimony of Sergeant Butts.

It is for you to say whether the evidence relied upon to corroborate Clark in this case is sufficient, and whether it tends to connect the defendant Haughton with the commission of the crime 2474
charged.

There is no dispute about the defendant Moore having confessed that he committed the crime charged. He admits he made and signed such a confession.

The law relating to confessions is as follows: "A confession of a defendant, whether in the course of a judicial proceeding, or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats."

The defendant Moore contends that his confession was made under the influence of fear produced by threats, and he further contends that he made it upon the advice of a man, who represented 2475
himself to him as a lawyer, that he would have the confession thrown out when the case came to trial. He also contends that he made the confession at the direction or suggestion of Mr. Ryan, and that it is not the truth.

The defendant Moore contends that on February 7, 1947, he was brought to the Bronx some time before 6:00 P. M.; that upon arrival he was

brought to a room in the District Attorney's office near the elevator; that shortly thereafter he was taken to Mr. Ryan's room, where he saw Adolph Clark; that Clark left the room, and he was questioned about the shooting of Detective Burke; that during this interview his arm was examined by Mr. Ryan, and he was shown a number of pictures by him; that in this interview he at all times denied that he participated in the crime charged; that he thought this interview lasted about thirty minutes; that he was taken from Mr. Ryan's room to another room in the District Attorney's
2477 office, where he was beaten by a number of policemen; that a detective knocked him in a chair; that he was kicked in the stomach, and, to use his language, "given the works;" that he was told to tell the truth and he wouldn't get hurt; that he was then hit and beaten some more, and was told he would be kicked until he told the truth; that Mr. Ryan entered the room and asked him if he wanted to get it off his conscience; that he told Mr. Ryan he had nothing on his conscience; that Mr. Foley entered the room and said, "Leave him alone for a minute;" that when Mr. Foley left the detectives then beat him some more; that he requested to go to the bathroom; that when he sat on the stool some detective kicked him in the
2478 face, and Foden said, "I should drill the son-of-a bitch and say he jumped out of the window."

The defendant Moore contends that he was beaten by the police in two different rooms, and that the beating continued from the time he arrived until he made his first statement.

The defendant contends that during one of his interviews by Mr. Ryan some man entered and represented himself as a lawyer and advised him

to do just as he was asked or they would kill him, and that he would represent him in court if he had no money, and have his confession thrown out.

The defendant Moore contends that after making the first statement, and before making the second statement, he was kicked in the chest by Mr. Ryan; that no one else struck him, but that he was threatened.

The defendant has identified the following men as having struck him: Mr. Honohan, Detectives Foden, Holt and Farrell. He contends others struck him, but that he doesn't know who they 2480
are; that he then decided to give a statement, because he was in fear of further beatings, and upon the advice of the unknown man who represented himself as a lawyer; that he then made a statement to Mr. Ryan, which he signed, and that he signed the exhibits; that he did not know the facts in the case, but made the statement and signed on the back of the pictures as directed by Mr. Ryan; that Mr. Ryan supplied the information contained in his confession.

The defendant contends that his confession is not true; that it was not a voluntary confession; that he made it because of beatings he received, and in fear of further injury and upon advice of the man who represented himself to be a 2481
lawyer, whom he now knows was not one.

The People contend that the confession of the defendant Moore was freely and voluntarily made. The People contend that the defendant Moore was not struck nor threatened at any time. The People contend that no one ever hit this defendant, and in support of this contention the People point to the testimony in this case that the defend-

ant was never in the custody of the police from the time he was taken from the Tombs, but that at all times he was in the custody of men attached to the District Attorney's office.

In support of this contention, the People point to the testimony of Mr. Ryan that he did not kick this defendant, and that no man represented himself as a lawyer, in his presence, to this defendant; to the testimony that Moore advised Haughton to confess, and was present when Haughton confessed; to the testimony of Detectives Holt, Foden and Farrell that at no time did they strike
2483 the defendant Moore; to the testimony of Detective Foden that Moore said to Banks on February 8th: "Look, fellow, I am in trouble; don't you get in trouble. All that they want from you is the gun. Tell them where the gun is." That when he got the gun at Askew's he showed it to Moore, who said it was the gun he had on December 13th.

To the testimony of Banks that he saw the defendant Moore February 8th at the District Attorney's office, and Moore said to him, "They know everything, so give them the gun." That he then went to get the gun.

The People point to the testimony in this case that the defendant signed each and every page
2484 of his confession and made his own corrections.

The People point to the testimony that the defendant identified pictures, interior and exterior, of premises 1439 Webster Avenue, and that he signed some of them himself and made notes upon the back.

The People, in support of its contention that the confession made by Moore was voluntary, point to the contents of the second statement to

the effect that Moore said that he read the first statement thoroughly, and that he wanted to make some changes; that the first and second statements were voluntary, and that neither Mr. Ryan nor anybody else made him any promises, and that he had not been mistreated in any way.

The People point to the testimony of Dr. Hochman and Mr. Shaw that they were present in Mr. Ryan's room between Moore's first and second statement, and that Mr. Ryan did not strike the defendant Moore;

To the testimony of John E. Honohan to the effect that after he drove the defendant Moore, 2486
he did not see him again until the trial began; that on the night of February 7th he was making investigations under Mr. Breslin's direction, and was out of the building on a number of occasions; that he did not hit the defendant Moore.

The People point to the testimony of Edward Williams, the former porter, that he was not chased from the toilet by the police; that he saw the defendant Moore in Mr. Ryan's room when he cleaned it;

To the testimony of Richard Snyder that he was in the District Attorney's office from 8:00 P. M., February 7th, to 3:30 A. M. on February 8th; that he was in and out of several rooms, and was present when the defendants had their pic- 2487
tures taken.

Gentlemen, in determining the character of a confession, whether it is true and freely and voluntarily made, or whether untrue and not voluntary, you must consider all the circumstances in the case, and particularly the circumstances at the time the confession is made or alleged to have been made.

Now, there are two questions you must consider and determine with respect to Moore's confession. The first question is this: Was it freely and voluntarily made, irrespective of whether it is true or false?

You heard all the testimony on this point. You have heard the testimony of the officers, the defendant and others on this point. It is for you to determine what the truth is with respect to whether or not the confession of Moore was freely and voluntarily made.

If you believe that the defendant Moore made
2489 the confession as the result of fear produced by beatings or threats, or as the result of advice he received by someone falsely representing he was an attorney, irrespective of whether the confession is true or false, or if you entertain a reasonable doubt about it, it is your duty to reject it, and you must not consider the confession as evidence against the defendant Moore in your deliberations.

On the other hand, if you find from the evidence and are satisfied beyond a reasonable doubt that the confession was a voluntary one, as the People contend it was, then the next question with respect to the confession that you must consider and decide is, is it the truth?

2490 In determining this question, you have a right to consider the contents of the confession itself. Do the contents of the confession of Moore convince you that when the defendant Moore made it he was telling the truth?

In determining whether it is true or false, you have a right to compare it with the other testimony in the case. Does the confession corroborate or is it corroborated by other testimony, by

other facts and circumstances in the case, in such a way that you are satisfied beyond a reasonable doubt that the defendant Moore was telling the truth when he made it? 2491

In determining this question, you should consider the testimony of Shaw, Clark, Banks, Brown, Dupree, Salmore, Ryan and Foden.

If you find and determine that the confession was made by Moore at the suggestion of or at the dictation or direction or prompting of Mr. Ryan, or that the confession is not true, or, if you entertain a reasonable doubt about it, you must reject the confession and you must not consider it against the defendant Moore in your deliberations. 2492

On the other hand, if you find from the evidence and are satisfied beyond a reasonable doubt that the confession made by the defendant Moore was freely and voluntarily made, and that when he made it he was telling the truth about his participation in the crime charged, it is evidence of the most satisfactory character. It is for you to say, because it is up to you to determine all questions of fact in the case. You must use your common sense in determining the issues. It is for you to say whom you believe in this case.

The defendant Moore has testified in his own behalf that on December 13, 1946, he borrowed the gun from Banks for Clark; that he did not discuss with Haughton and Clark a hold-up in the Bronx; that on December 13, 1946, he did not come to the Bronx with Haughton, and that he did not attempt to hold up the liquor store at 1439 Webster Avenue, and that he did not shoot Detective Burke. 2493

The defendant Moore, in support of his denial of participation in the crime charged, contends that on December 13, 1946, between the hours of 5:00 P. M. and 8:00 P. M. he was in the neighborhood of 101st Street and Second Avenue; that when he left Harlem he went to a bar and grill on Second Avenue at 101st Street or 102nd Street, arriving around four or five; that he met a man named "Joe" there; that he spent some time looking for a man named "Red" but couldn't find him; that he spent some time in a school-yard at 101st Street and Second Avenue; that he was in
2495 a crap game at 103rd Street in a hallway with a number of men that night around 8:30 where he met men named Artie and Packard; that he was in a fight and got stabbed on the left arm, and returned to his room about 9:00 P. M. His defense is an alibi.

An alibi is evidence by a defendant that at the time when it is charged that a crime was committed by him he was at some other place. It is evidence which, if believed, shows that the defendant could not have participated in the crime as claimed by the People. It is the best defense an innocent man can make. Such evidence is at times fabricated, that is, false, and when given by witnesses who are interested in the case or
2496 whose credibility is otherwise impeached, it should be carefully scrutinized.

The defendant Moore contends that he was in Manhattan at the time the crime was committed, and could not have committed the crime charged in Bronx County.

The People contend that the defendant Moore was in premises 1439 Webster Avenue with Haughton between 5:30 P. M. and 6:00 P. M. on

the evening of December 13, 1946, when Burke was killed.

Both of these contentions cannot be true. They cannot be reconciled.

In weighing and considering this testimony as to the defendant Moore's alibi, you are called upon to consider the possibility of mistake or falsity on the part of the witnesses for the prosecution and the possibility of fabrication on the part of the defendant Moore.

If you believe the defendant Moore's testimony that he was in Harlem between 4:00 and 8:00 o'clock on December 13, 1946, you must infer that 2498
the People's witnesses are mistaken or have testified falsely, and the defendant Moore must be acquitted. If you find the testimony of the People's witnesses in this case is true, you may infer fabrication on the part of the defendant Moore.

If you find that the defendant Moore's alibi is fabricated, then that is a strong circumstance against the defendant Moore in this case. It is entirely up to you for your determination.

It is not disputed in this case that the defendant's left arm was injured on the evening of December 13, 1946. The defendant contends it was a stab wound.

The People contend it was a bullet wound, and 2499
in support of this contention point to the testimony of Dr. Hochman that the defendant told him it was a bullet wound.

To the testimony of Banks, Clark, Brown and Dupree, and to the confession made by Moore, and all the testimony in this case to the effect that it was a bullet wound. It is for you to decide whether that wound was a bullet wound or a stab wound.

If you believe it was a stab wound, that is a strong circumstance in favor of the defendant. On the other hand, if you believe it was a bullet wound, that is a strong circumstance against the defendant Moore. That is an issue for your determination, and it is a matter for you men to decide. It is for you to say and determine what the truth is in this case.

There is no dispute about the defendant Haughton having confessed that he participated in the commission of the crime charged. He admits he made and signed such a confession.

2501 He contends that it was made under the influence of fear produced by blows and threats, and he further contends that Moore told him he was beaten by the police and threatened with bodily harm, and that Moore also told him that he had spoken to a lawyer who advised him that he could have the confession thrown out when the case came to trial. He also contends that Moore told him to confess or he would be beaten. He also contends that he made the confession at the direction or suggestion of Mr. Ryan, and that it is not the truth.

The defendant Haughton contends that on February 8, 1946, about 1:00 A. M., the police, with guns drawn, came to his home, and when he opened
2502 the door he was pulled into the hall and hit on the left side of the head with a gun by one of the detectives; that the officers pushed him into his bedroom and made him strip; that the officers searched the premises for a gun; that when he went to reach for his clothes he got hit in the head with a gun by a detective; that the police told him they wanted him for stealing a car; that he got dressed and entered an automobile with

the police; that on his way to the car one of the officers told him to run, that the police wanted to put a bullet in him; that the car proceeded to Prospect Avenue, where it stalled; that several of the police got out of the car; that the remaining officer said, "Get out and run; I want to put a bullet in you," and he was hit with a pistol in the stomach; that he was told that when they got him to the District Attorney's office he would be whipped if he didn't tell the District Attorney; that after about one minute in the District Attorney's office he was taken to Mr. Ryan's room and questioned about the crime, which he denied; that he spoke to Moore, who told him he better tell them what they want and that a lawyer had advised him to talk, but that he still denied participation in the crime; that Mr. Ryan kept questioning him, and raised his hands, and that a detective who was there said, "I will blow your brains out;" that during his talk with Mr. Ryan, Mr. Ryan told him the facts in the case; that he was asked substantially the same questions; that he then confessed, supplying information which Mr. Ryan had given him.

The People contend that the confession of Haughton was freely and voluntarily made. The People contend that the defendant Haughton was not struck nor threatened at any time. In support of this contention, the People point to the testimony in this case that the defendant Haughton signed each page of his confession, and signed his name on the back of one of the pictures or the photographs of the liquor store.

The People point to the defendant's testimony in this case that he was only a minute in the District Attorney's office when he was taken to Mr.

Ryan's room, where he remained until he made his confession.

The People point to the testimony of the officers who escorted the defendant from his home to the District Attorney's office; to Reidy, Shields, Curley, Tracy and Ellis, to the effect that the defendant Haughton was not struck at any time by any of them.

The People point to the testimony of Mr. Ryan to the effect that Moore advised Haughton to confess, and was present during the statement.

The People point to the contents of the confes-
2507 sion made by Haughton to the effect that his statement was voluntarily made; that he was made no promises; that he was treated well in the District Attorney's office, and that nobody threatened or harmed him in any way.

There are two questions you must consider and determine with respect to Haughton's confession. The first is this: Was it freely and voluntarily made, irrespective of whether it is true or false? You have heard the testimony of Mr. Ryan, the officers, the contents of the defendant's confession and the defendant's testimony in this case. It is for you to determine what the truth is with respect to whether or not the confession of Haughton was freely and voluntarily made.

2508 If you believe that the defendant Haughton made the confession as the result of fear produced by threats, or if you believe that Moore told him that he was beaten by the police, or if you believe that Moore told him about the advice he received from a man representing himself as a lawyer, or if you believe that Moore told him to confess or he would be beaten by the police, or if you believe that the defendant made a confession

as the result of what Moore said, irrespective of whether the confession is true or false, or if you entertain a reasonable doubt about it, it is your duty to reject it, and you must not consider the confession against the defendant Haughton in your deliberations and he must be acquitted.

On the other hand, if you find from the evidence and are satisfied beyond a reasonable doubt that the confession was a voluntary one, as the People contend it was, then the next question with respect to the confession that you must consider and decide is this: Is it the truth?

In determining this question, you have a right 2510
to consider the contents of the confession itself. Does the confession of Haughton convince you that when the defendant Haughton made it he was telling the truth?

In determining whether it is true or false, you have a right to compare it with other testimony in the case. Does the confession corroborate or is it corroborated by other testimony, by other facts and circumstances in the case, in such a way that you are satisfied beyond a reasonable doubt that the defendant Haughton was telling the truth when he made it? In determining this question, you should consider the testimony of Shaw as to what happened on December 13, 1946, and to the testimony of Ryan and to the testimony of Clark. 2511

If you find and determine that the confession was made by Haughton at the suggestion, prompting or direction of Ryan, or that the confession is not true, or if you entertain a reasonable doubt about it, you must reject the confession, and you must not consider it against the defendant Haughton in your deliberations, and he must be acquitted.

On the other hand, if you find from the evidence and are satisfied beyond a reasonable doubt that the confession made by Haughton was freely and voluntarily made, and that when he made it he was telling the truth about his participation in the crime charged, it is evidence of the most satisfactory character. It is, of course, for you to say. You decide all questions of fact.

The defendant Haughton has testified in his own behalf that early in December, 1946, he passed a liquor store on Webster Avenue with Clark, and that it was Clark who said it would be
2513 easy to take over.

That on December 13, 1946, he did not attempt to hold up the liquor store at 1439 Webster Avenue.

The defendant Haughton, in support of his denial of participation in the crime charged, contends that on December 13, 1946, he was in a poolroom in Harlem; that he did not leave that poolroom with Clark or Moore; that about 5:00 P. M. he left the poolroom and went to his brother's home where he remained until 10:00 P. M.; that he then went home and saw his father and his step-mother.

In support of this contention, he points to the testimony of Cecil Haughton, his brother, to the
2514 effect that the defendant Haughton came to his home at 236 West 135th Street, where he resides with his wife and mother-in-law; that the defendant remained there until some time around 10:00 o'clock.

His defense is an alibi. The defendant Haughton contends that he was at the home of his brother in Manhattan between 5:00 and 10:00 P. M. on December 13, 1946, and could not have

committed the crime charged in the indictment in this case.

The People contend that the defendant Haughton was in premises 1439 Webster Avenue with Moore between 5:30 and 6:00 P. M. on the evening of December 13, 1946, when Detective Burke was killed. Both of these contentions cannot be true. They cannot be reconciled.

In weighing and considering this testimony as to the defendant Haughton's alibi, you are called upon to consider the possibility of mistake or falsity on the part of the witnesses for the prosecution, and the possibility of fabrication on 2516
the part of the defendant Haughton.

If you believe the defendant Haughton's testimony that he was at his brother's house between 5:00 and 10:00, you must infer that the People's witnesses are mistaken or have testified falsely, and the defendant Haughton must be acquitted.

If you find the testimony of the People's witnesses in this case is true, you may infer fabrication on the part of the defendant Haughton.

If you find that the defendant Haughton's alibi is fabricated, then that is a strong circumstance against the defendant Haughton in this case. It is for you to say.

You are the sole and exclusive judges of the facts in this case. Your recollection of the evi- 2517
dence must prevail; not that of the Court or counsel on either side. You must give to the facts in this case a common-sense intrepretation. Confine yourselves to the facts introduced in evidence in this case. You are to determine this case by what is to be found in the record. You are not to speculate, guess or make conjectures, nor are you to consider anything outside the facts in this case.

You are the judges of the credibility of the witnesses in this case. Several of the witnesses for the People who have appeared here, as well as the two defendants, have been previously convicted of crime. You may consider that in determining what weight, what credit and what belief you will attach to their testimony in this case.

Sergeant Butts testified in this case. He was called as an expert witness. He is what the lay person might call a specialist. An expert is a person who, by education, training or experience, has acquired knowledge upon a particular subject in a particular field of endeavor which the
2519 average person does not possess.

The law accepts the testimony of expert witnesses as an aid to the jury under certain circumstances, and upon subjects not ordinarly within the knowledge of the average layman.

An expert when called in a case may give his opinion from his own observation, or in answer to hypothetical questions. The testimony of experts, whether with respect to what they have seen or observed, or with respect to their opinion on assumed state of facts, is not to be accepted or rejected at will, but it is to be weighed and considered by the jury the same as any other evidence, the jury being of course at liberty,
2520 after weighing and considering such testimony, to disbelieve it when it is improper and when it is discredited or disproved by other testimony in the case, or, when the jury believes the expert testimony, they have the right to accept it, where they find that there is ample basis afforded them to come to an intelligent conclusion that the opinion expressed by the expert is a correct one.

Gentlemen, you must consider the testimony of the expert, Sergeant Butts, in the light of all the other testimony in the case. You must analyze the testimony of Sergeant Butts the same as any other witness in the case. You must consider what was developed on direct as well as what was developed on cross-examination of each and every witness in the case.

The credibility of experts, just the same as the credibility of all witnesses, is for your determination. It is for you to say, in the light of all the circumstances in the case, whether the opinion expressed by Sergeant Butts is correct.

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Now, when you consider questions which are in dispute and all the facts in this case, be not content with just merely analyzing what a particular witness has testified to, but check up the testimony of that witness with that of other witnesses in the case; check up the testimony of all witnesses with the circumstances in the case, the physical facts in the case, and in that way endeavor to arrive at the true facts in this case.

Now, it is for you to say whom you believe has told the truth in this case. You determine the facts and you determine the credibility of the witnesses. When I speak of the credibility of the witnesses, I mean the trustworthiness or the truthfulness of the witnesses who have testified in this case.

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In determining the credibility of the witnesses, you have a right to consider whether any witness who has testified here has an interest in the outcome or any interest in the case. I charge you, as a matter of law, that the defendants are interested witnesses.

As to all the other witnesses in the case, it is a question of fact for you to determine, whether or not they are interested in the outcome of this case. It does not follow that because a witness may be interested in the outcome of a case that such witness lies or tells a falsehood, because we all know from our common experience that people interested in matters sometimes tell the truth and they sometimes resort to falsehood.

If you determine any witness is interested in the outcome of this case, you may consider whether the interest of that witness has induced him to testify falsely. It is always a question of fact in every given case for the determination of a jury.

You have had the benefit of listening to the witnesses testify. You have had had the benefit of their testimony on direct and cross-examination. You have had an opportunity to observe them and to look them over for yourselves, to observe their manner of testifying and their responsiveness to questions, and it is for you to say whom you believe has told the truth with respect to the testimony which has been given by the witnesses in this case.

If you find that any witness who has been called in this case has wilfully and deliberately lied with respect to any material fact in the case, you may reject all of that witness's testimony, or you may accept so much of it as you believe to be true. In other words, it is for you to determine what the facts are. It is for you to say whom you believe and whom you disbelieve.

Now, each of the defendants in this case is charged with a serious crime, and, although the testimony of each is to be taken and weighed

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and considered by you in the same way and in the same manner as you would the testimony of any other witness, still, if you find in this case that the testimony of either of the defendants conflicts with the testimony of other witnesses, you have a right, for the purpose of enabling you to determine his credibility, to take into consideration that fact, namely, that his testimony conflicts with the testimony of other witnesses, and it is for you to say whether a desire to relieve himself of a charge of this character would furnish sufficient inducement for him to testify falsely with respect to any material fact in the case.

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Two witnesses were called by the defendant Haughton who testified as to his good character. The law is as follows: "Evidence of good character may create a doubt, where without it none would exist."

If you believe that the defendant Moore was in Harlem when Detective Burke was killed, or if his alibi creates a reasonable doubt as to his guilt, he must be acquitted; or if, on all the evidence in this case, you entertain a reasonable doubt of the defendant Moore's guilt, he must be acquitted.

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If you believe that the defendant Haughton was in his brother's home when Burke was killed, or if his alibi creates a reasonable doubt as to his guilt, he must be acquitted; or, if the evidence of good character creates a reasonable doubt as to his guilt, he must be acquitted; or, if you believe that Haughton's confession was not voluntary or was not true, he must be acquitted; or, if you entertain a reasonable doubt about it, he must be acquitted; or if, on the whole

case you entertain a reasonable doubt about the guilt of the defendant Haughton, he must be acquitted.

Gentlemen, as to the defendant Haughton, if you believe the testimony of Mr. Shaw, the husband of the proprietor of the store at 1439 Webster Avenue, that two men attempted to hold him up on December 13, 1946, and that during that attempted hold-up Detective Burke was killed, and, if you further believe that the defendant Haughton confessed that he participated in that attempted hold-up and that his confession was freely and voluntarily made and is
2531 the truth, your verdict as to him should be guilty as charged; or, if you believe the testimony of the accomplice Clark, and if you further believe that the defendant Haughton confessed that he participated in that attempted hold-up and that his confession was freely and voluntarily made and is the truth, and if you believe that Burke was killed during that attempted hold-up, your verdict as to him should be guilty as charged.

If you are satisfied from the evidence in this case beyond a reasonable doubt that the two defendants, Moore and Haughton, entered into a conspiracy to commit a robbery in premises 1439
2532 Webster Avenue; that they armed themselves with a gun to effectuate that purpose, and that pursuant to this conspiracy or arrangement they entered the liquor store at 1439 Webster Avenue on December 13, 1946, for the purpose of committing a robbery, and that while attempting to rob and hold up Richard Shaw a shot was fired by the defendant Moore which caused the death of Detective Burke, and that this shot was fired

in the course of an attempt to commit a robbery, then each of the defendants so engaged in the attempt to commit that robbery is guilty of the crime of murder in the first degree. 2533

The object of our jury system, gentlemen, is to bring twelve men into the jury box who are of common intelligence and common experience in life, and the purpose of the jury system is, as you know, to have those twelve persons focus their united intelligence on the facts in the case.

A juror is not required to abandon his common sense and good judgment when he enters the jury box. The jury box in the court-room is a forum where common sense and good judgment should be displayed. All that is required of you is for you to use the same common sense and the same good judgment in this case as you would apply in the business and social relationships in your own lives. 2534

You must be cool, calm, impartial and discriminating. You must be animated by an abiding sense of justice and a desire to maintain justice in the community. You must make the conclusions as to the facts in this case, and you must take the law as I have submitted it to you.

Your duty in this case is clear. It is to render a verdict on the facts. Do not permit your minds to be diverted by an appeal to passion or prejudice. Remarks designed to appeal to your sympathy or to arouse your passions or prejudice should be disregarded. 2535

Confine yourselves to the testimony in the case and the law as I have given it to you.

When you retire to the jury-room, every effort should be made to harmonize the various views, to the end that you will make every endeavor

to come to an agreement, which agreement will speak the truth.

Your discussions should be dignified and unimpassioned and intelligent, and based upon the evidence and the law: the evidence as you have understood it, and the law as I have given it to you.

No juror has a right to erect an arbitrary standard and refuse to discuss the evidence, or close his mind and judgment to the reasons advanced by his fellow-jurors. He should always be open to reason. But a juror has the right, if he thinks
2537 that he is right and is unconvinced by the arguments of others, to stand by his opinion.

You should, however, make every effort to blend your judgment with the judgment of others, insofar as it may be done with justice to the interests of the People of the State of New York and to these defendants.

You will report your verdict through your foreman, after you have unanimously agreed, as follows:

As to the defendant Moore, your verdict will be guilty or not guilty, as the evidence satisfies you. If your verdict is guilty as to him, you may as a part of your verdict recommend that the defendant Moore be imprisoned for the term
2538 of his natural life.

As to the defendant Haughton, your verdict will be guilty or not guilty, as the evidence satisfies you. If your verdict is guilty as to him, you may as a part of your verdict recommend that the defendant Haughton be imprisoned for the term of his natural life.

Any exceptions or requests?

Mr. Ehrman: If the Court please, on behalf of the defendant Moore, I respectfully except to that portion of Your Honor's charge, where Your Honor states that the testimony of Sergeant Butts is evidence against this defendant.

The Court: Which defendant?

Mr. Ehrman: Moore. I also ask Your Honor to charge that the denials by the Court of motions by the defense at the close of the People's case are not evidence that the Court has formed any opinion as to their guilt or innocence.

The Court: I so charge. The Court is not entitled to indicate an opinion one way or the other with respect to the facts in the case. 2540

Mr. Ehrman: I also ask Your Honor to charge that the prosecution has the burden of proving that the confession was made voluntarily, and it is not upon the defendant to so prove.

The Court: I so charge.

Mr. McDonough: In behalf of the defendant Haughton, I want to make the same request as to the confession, that is, that the burden is upon the People to prove that it is a voluntary statement, freely made.

The Court: I so charge.

Mr. Foley: No requests, sir.

The Court: What about the exhibits, gentlemen? 2541

Mr. Foley: The People will consent that the jury may have all the exhibits, except those that might concern the original hearing on the challenge to the panel. We consent to anything that was introduced during the trial.

Mr. Fleischman: In behalf of the defendant Haughton, we consent to the use of any of the exhibits.

Mr. Ehrman: The same in behalf of the defendant Moore.

The Court: Mr. Foreman, in the event you want any of the exhibits in the case sent up to you, will you kindly indicate that to the man in charge, and we will see that they are sent up to you.

Mr. Lahey and Mr. McCaffrey, your job is over now, and with the thanks of the Court you are excused; you are discharged from further service in the case.

(To Jury): Will you gentlemen step upstairs, please?

2543 (At 4:30 P. M. the jury retires to deliberate upon a verdict.)

The Court: Defendants remanded.

(At 5:15 P. M. the jury returns to the courtroom and the following transpires):

The Clerk of the Court: Mr. Foreman and Gentlemen of the Jury: Have you agreed upon a verdict?

The Foreman of the Jury: We have.

The Clerk of the Court: How say you, do you find the defendants, George Cornelius Moore and Lester Haughton, and each of them guilty or not guilty?

The Foreman of the Jury: We find both of the defendants guilty of murder as charged.

2544 The Clerk of the Court: Mr. Foreman and Gentlemen of the Jury, hearken unto your verdict as it stands recorded. You and each of you say you find the defendants, George Cornelius Moore and Lester Haughton, and each of them guilty of murder in the first degree, and so say you all.

Mr. Wilkinson: Now, if the Court pleases, may we have the jury polled, please?

The Court: Poll the jury.

2545

The Clerk of the Court: Mr. Foreman and Gentlemen of the Jury, hearken unto your verdict as it stands recorded. You and each of you say you find the defendants, George Cornelius Moore and Lester Haughton, and each of them guilty of the crime of murder in the first degree, and so say you all.

Mr. Edward J. Engel, is murder in the first degree as to each defendant your verdict?

Mr. Engel: Yes, sir.

The Clerk of the Court: Charles F. Davis, is murder in the first degree as to each defendant your verdict?

2546

Mr. Davis: It is.

The Clerk of the Court: Mr. Walter H. Evers, is murder in the first degree as to each defendant your verdict?

Mr. Evers: Yes; as to each defendant.

The Clerk of the Court: Mr. Eugene J. Gall, is murder in the first degree as to each defendant your verdict?

Mr. Gall: It is.

The Clerk of the Court: Mr. John Lorraine Stewart, is murder in the first degree as to each defendant your verdict?

Mr. Stewart: Yes, sir.

The Clerk of the Court: Mr. John O. O'Connell, is murder in the first degree as to each de- 2547
fendant your verdict?

Mr. O'Connell: Yes, sir.

The Clerk of the Court: Mr. Maxwell S. Symon, is murder in the first degree as to each defendant your verdict?

Mr. Symon: It is.

The Clerk of the Court: Mr. Albert Seltenreich, is murder in the first degree as to each defendant your verdict?

Mr. Seltenreich: It is.

The Clerk of the Court: Mr. John Peat, is murder in the first degree as to each defendant your verdict?

Mr. Peat: It is.

The Clerk of the Court: Mr. Clarence W. Gray, is murder in the first degree as to each defendant your verdict?

Mr. Gray: It is.

The Clerk of the Court: Mr. Charles Thomson, is murder in the first degree as to each defendant your verdict?

2549 Mr. Thomson: It is.

The Clerk of the Court: Mr. Joseph C. Luke, is murder in the first degree as to each defendant your verdict?

Mr. Luke: It is.

The Clerk of the Court: Mr. Foreman and Gentlemen of the Jury, hearken unto your verdict as it stands recorded. You and each of you say you find the defendants, George Cornelius Moore and Lester Haughton, and each of them guilty of murder in the first degree, and so say you all.

Mr. Wilkinson: Now, may we reserve our right on all motions until the day of sentence?

The Court: Yes. Motions reserved until the
2550 day of sentence.

(The defendants are duly sworn and their pedigrees recorded by the clerk of the court, with previous convictions as follows:

As to Moore: 1941—General Sessions, New York County, Assault, Second Degree, Elmira.

As to Haughton: 1939—Special Sessions, Manhattan, Possession of Firearm, Coxsackie.

1940—Special Sessions, Manhattan, Malicious Mischief, Sentence Suspended.

1942—General Sessions, New York County, Robbery, Second Degree, Elmira Reformatory.)

The Court: Monday, April 14th. Is that agreeable to you men?

Mr. Wilkinson: That's convenient.

The Court: For sentence on April 14th. Defendants remanded. Referred to the Probation Department for investigation and report.

Sentence. 2552

COURT COURT,

BRONX COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK, against GEORGE C. MOORE and LESTER HAUGHTON, Defendants.	Ind. 178-1947 (Murder 1st degree) Sentences

2553

New York, April 14, 1947.

Before: HON. JAMES M. BARRETT, County Judge.

CHARLES J. DESANTIS
Official Court Reporter.

APPEARANCES:

For the People: SAMUEL J. FOLEY, Esq., District Attorney, and NICHOLAS F. DELAGI, Esq., Assistant District Attorney.

For Defendant Moore: JOHN F. WILKINSON, Esq., and ISIDORE EHRMAN, Esq.

For Defendant Haughton: I. SAUL FLEISCHMAN, Esq., and HENRY MCDONOUGH, Esq.

2555 Court Clerk Hirscher: George Cornelius Moore and Lester Haughton, what have you and each of you to say why sentence of death shall not be pronounced upon you according to law?

Mr. Wilkinson: If the Court pleases, in behalf of the defendant George C. Moore, at this time I would respectfully move to set aside the verdict of the jury rendered against this defendant on the grounds that it is contrary to law, contrary to the weight of evidence and under all of the provisions of the Code of Criminal Procedure so provided.

The Court: Motion denied.

Mr. Wilkinson: I respectfully except.

2556 Mr. Fleischman: Your Honor pleases, in behalf of the defendant Haughton, I move at this time to set aside the verdict as contrary to the weight of the evidence and upon all the grounds provided for under the Code of Criminal Procedure.

The Court: Motion denied.

Mr. Fleischman: Exception.

Mr. Wilkinson: The defendant George C. Moore is now ready for sentence.

2557

Mr. Fleischman: The defendant Lester Haughton is ready for sentence, your Honor.

The Court: The District Attorney.

Mr. Foley: I have nothing to say, your Honor.

The Court: George Cornelius Moore and Lester Haughton, you and each of you have been convicted of the crime of murder in the first degree by verdict of the jury. The sentence of the Court is that each of you, for the crime of which you have been convicted, are hereby sentenced to the punishment of death. It is ordered that the Commissioner of Corrections of the City of New York take you forthwith to State's Prison, 2558 where you and each of you will be detained and kept in solitary confinement until the week beginning May 26th, 1947, and during that week the authorities at Sing Sing are to put you to death as provided by law. Remanded.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcript of the stenographic minutes in the case of The People of the State of New York v. George C. Moore and Lester Haughton, Defendants.

HOWARD J. KELLEY,
IRVING NETZER,
CHARLES J. DESANTIS,
Official Court Reporters,
County Court, Bronx County. 2559

2560

People's Exhibit 1.

Revolver.

(See stipulation printed at page 900.)

People's Exhibit 2.

.45 calibre copper jacket bullet.

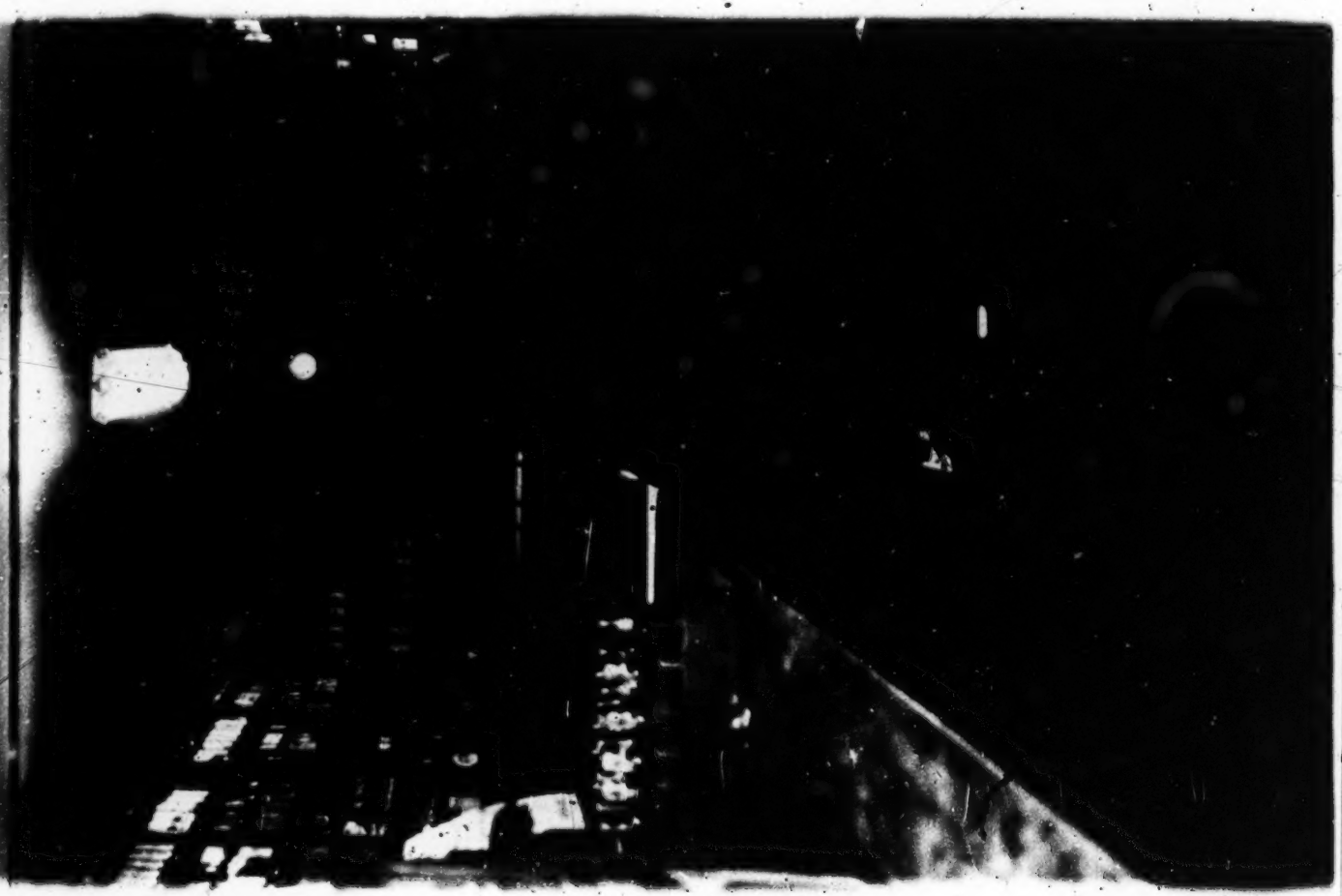
2561 (See stipulation printed at page 900.)

People's Exhibit 3.

Photograph.

(Bound in opposite.)

2562

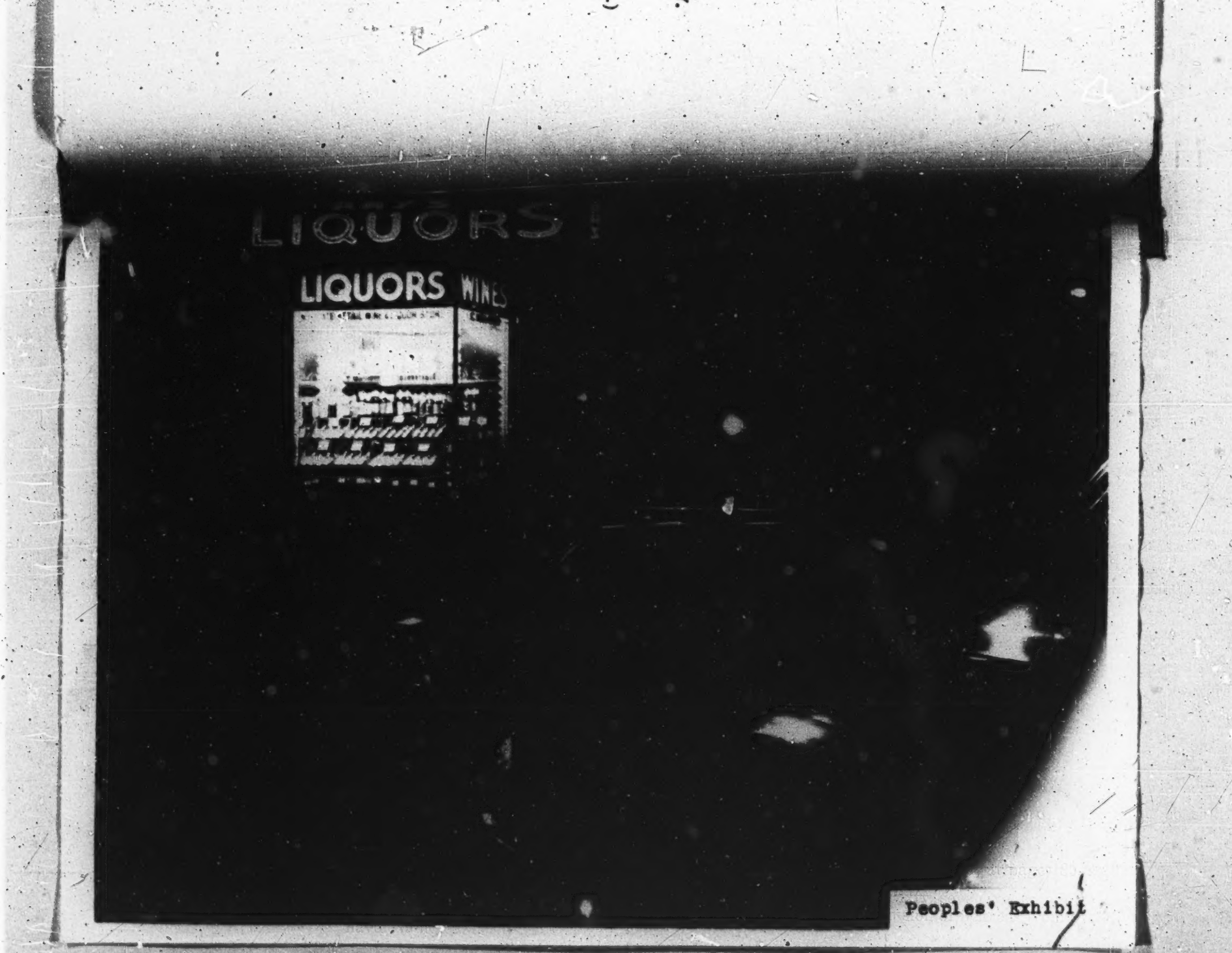


Peoples' Exhibit 4

People's Exhibit 6.

Photograph.

(Bound in opposite.)



Peoples' Exhibit

2590

People's Exhibit 8.

Copper shell.

(See stipulation printed at page 900.)

People's Exhibit 9.

Copper shell.

(See stipulation printed at page 900.)

2589

People's Exhibit 10.

Copper shell case.

(See stipulation printed at page 900.)

People's Exhibit 11.

Spanish gun.

(See stipulation printed at page 900.)

2592

People's Exhibit 12.

.45 calibre automatic gun.

(See stipulation printed at page 900.)

2593

People's Exhibit 13.

.45 calibre bullet.

(See stipulation printed at page 900.)

People's Exhibit 14.

.45 calibre bullet and fragment casing.

(See stipulation printed at page 900.)

2594

People's Exhibit 15.

.45 calibre bullet.

(See stipulation printed at page 900.)

People's Exhibit 16.

Two pieces copper casings.

(See stipulation printed at page 900.)

2595

People's Exhibit 17.

Two pieces copper casings and one lead collar.

(See stipulation printed at page 900.)

2596

People's Exhibit 18.

Five discharged shells.

(See stipulation printed at page 900.)

People's Exhibit 19.

.38 calibre lead pellet.

(See stipulation printed at page 900.)

2597

People's Exhibit 20.

.38 calibre lead pellet.

(See stipulation printed at page 900.)

People's Exhibit 21.

One piece of lead.

(See stipulation printed at page 900.)

2598

People's Exhibit 22.

.38 calibre lead pellet.

(See stipulation printed at page 900.)

2599

People's Exhibit 23.

.38 deformed bullet.

(See stipulation printed at page 900.)

People's Exhibit 24.

Copper coated .38 calibre bullet.

(See stipulation printed at page 900.)

2600

People's Exhibit 25.

Statement taken at the District Attorney's Office on February 7, 1947, at 8.42 P.M. in the presence of Assistant District Attorney Ryan; Assistant District Attorney Lechtman; Lieutenant Dinan; Detective Greene, Shield Number 1749—Homicide Squad; Arthur Salmore, Stenographer.

By Mr. Ryan.

Q. What is your full name? A. George Cornelius Moore.

Q. Where do you live? A. 241 West 135th Street. 2601

Q. You live there with whom? A. I was living there with a boy named Adolph Clark.

Q. Is that a furnished room? A. It is.

Q. What's the apartment number? A. There is nothing on the door; I really don't know.

Q. How long have you been there? A. About approximately three weeks.

2602 *People's Exhibit 25.*

Q. Do you remember Friday, December 13, 1946? A. I do.

Q. And were you in the Bronx that day? A. I was.

Q. At what time did you come to the Bronx? A. About six, I got in the Bronx six, six-thirty. Not later than six-thirty.

Q. Where did you come from? A. From my house, I walked to 134th Street and I seen this fellow.

Q. What was the name of that fellow? A. I really don't know.

2603 Q. Is it that you don't know or you don't want to tell me his name? A. I don't know it.

Q. Where did you meet this man? A. Between '34 and '35th on Eighth.

Q. Do you mean West 134th Street and West 135th Street and Eighth Avenue? A. Yes.

Q. Is that in New York County? A. Yes, right.

Q. After you met this man, what did you and he do? A. He and I was going to the Bronx to see some girl friends.

Q. Girl friends of his? A. Yes.

Q. What were the names of the girl friends? A. I really don't know.

Q. Had you ever been up to see them before?

2604 A. Never in my life.

Q. How did you come up to the Bronx? A. On the Eighth or Sixth Avenue Subway.

Q. Where did you get off? A. It was before the last stop.

Q. What did you do then? A. We walked over till we had gotten where the whiskey store was and we was supposed to walk around the block and we seen the liquor store.

Q. Are you familiar with the Bronx? A. I no not.

Q. Are you familiar with Webster Avenue? A. No.

Q. Did you see a liquor store there? A. I did.

Q. I show you this picture and I ask you whether this is a picture of the liquor store? A. It is.

Q. Would you mark your name on the back of it? A. Yes, sir.

Q. Would you write that on the back of it? A. What should I write?

Q. Is that the place you robbed? A. I will write my name. (Witness writes on back of photograph.) 2606

Q. Would you put todays date on it. What date is today? A. February 7.

Q. 1947. A. Yes.

Q. And is that a photograph of the outside of the store? A. It is.

Q. That you went into on December 13, 1946? A. It is.

Q. Would you write that on there, that this is the place. Write it anyway you want to in your own wording. (Witness writes on the back of the photograph.)

Q. Now what have you written? A. (Witness reads from back of photograph) "I entered this liquor store on December 13th, 1946 at about six fifteen or six thirty o'clock." 2607

Q. Might it have been before that time? A. If it is I got the time mixed up.

Q. And before you entered this store with this man that you had come up from New York County with, you and the man went into this store? A. Yes.

Q. Before you went into this store did you talk to him? A. To the man?

Q. The man that was with you? A. Yes.

Q. What was the conversation you two had? A. The conversation was that I asked him are the girls easy and he said, "Yes." I was not intending to raping them and I told him I came up because it was the 13th to bull shit around and I said I wanted to go back and try to win some money in poker and we came to Webster Avenue. He said, "Lets go in" and I said no, and I walked by and walked to the corner and
2609 I said, "No," and he said I am going in and I said, "Fuck it, I am going in too, I have nothing for Christmas," and I went in.

Q. Did you have a gun? A. I did not.

Q. And the other fellow have a gun? A. He did.

Q. What kind of gun? A. If I am not mistaken he had a gun.

Q. Where did you see it? A. Laying in the street.

Q. Did you see it before you went in the store? A. No, I didn't because he had it in his pocket.

Q. Before you and this man went in the store, did you talk about what each one would do in the store? A. He told me he would stick-up the
2610 man and I would go back and get the money.

Q. Did he tell you how you were to stick-up the man? A. It was a stick-up and stick up the man and take him in the back.

Q. You were supposed to say what? A. We were supposed to go back there in the store and they were to throw up their hands and he told me that was the old man working in the store, a son and a father and that's who I thought it

was all the time and then after that we were going to take him in the back and tie him up and get a cab and go home.

Q. Who went into the store first? A. I am not sure, me or him.

Q. What happened, did you both go in the store? A. Yes.

Q. What happened after you went in the store? A. After we went in the store and told him it was a stick-up Detective Burke was shooting.

Q. You didn't know it was Detective Burke? A. Not until I saw the paper.

Q. You didn't know it was a detective when you saw the other man that it was a detective? A. No I didn't. 2612

Q. He was a stranger to you? A. Yes.

Q. Where did the other man come from? A. From behind the passageway of whiskey crates or cartons.

Q. What happened as he came from behind the cartons? A. He came out shooting, there was lots of shooting.

Q. Yes. A. Well we ran out.

Q. Did you have a gun? A. No, I didn't.

Q. Did you fire any shots? A. I didn't have a gun I couldn't.

Q. Did the man that was with you have a gun? A. The man with me had a gun. 2613

Q. Did he fire shots? A. I don't know sir.

Q. How many shots did you hear while you were in the place? A. A number of them.

Q. Can you give me an idea of how many? A. I can not sir.

Q. Did any bullets hit you? A. One hit me in the left forearm.

Q. What happened when the bullet hit you? A. It paralyzed my arm. It twisted up. I thought I was hit closer to the heart because my left side was practically paralyzed.

Q. Did you get any money in the place? A. I did not.

Q. Did you hear bullets fired from behind you? A. From behind me and it was alongside of me and everywhere.

Q. Were you nearest the man that came from behind the partition? A. I don't think so.

Q. Was the man you were with hit with any
2615 bullets? A. Not as I know sir.

Q. Then after the shooting did you see this man who had come from behind the partition fall down? A. No, I really didn't. That's the truth, I didn't see him fall.

Q. You ran out of the store? A. I walked out of the store when I got across the curb I ran.

Q. Did the man that was with you run? A. He ran from the time he heard the shots he started to run. I ran towards the man and he was still shooting and I know because I looked behind me and I fell on the floor and I got up. The pressure of the bullet didn't knock me down.

Q. Now then after you left the store where did you go? A. Well you name the avenues.

2616 Q. I don't know the avenues. Give me, if possible the direction you ran. A. I'll give you the direction. I cam out of the whiskey store I turned right to the corner I run up that corner to a bridge going over something, it was a highway or tracks there. I seen some children on the bridge and I turned right again to a school yard and I seen myself walled in and that's where I lost him, he was walled up there I didn't no

where I was going and the next thoroughfare. I seen I was walking up three-quarters of the way up and I met a colored fellow with a dog. 2617

Q. Was that up a hill? A. Yes, it was.

Q. Can you describe it to me? A. It was made of bricks.

Q. The pavement was of brick? A. If I am not mistaken it was.

Q. You walked up the hill? A. Yes and I met the fellow with a dog. If I am not mistaken and I asked the direction of the subway and he told me the Third Avenue El was directly in front of me. So I walked to the El and turned left 2618
to the next street as the El station. I got in the El station and rode up to the next—I wouldn't say it was the next stop—I changed over and came back to 149th Street and Grand Concourse and got the subway; from the subway I got off at 125th Street and walked west to Eighth Avenue and as I was going to 133rd Street and Eighth Avenue by Arthur's Bar and Grill I seen a fellow there I knew.

Q. What is his name? A. His name is Lee.

Q. What's his last name? A. I really don't know that and I asked him will he tell my friend, Adolph Clark to come to the house at once. I then return home I was hurt. If he did know it, 2619
it was not to my knowledge. I went home and washed my arm.

Q. What did you wash the cut with? A. Plain luke warm water.

Q. Yes, then Adolph came in? A. Adolph came in shortly and he asked me what happened.

Q. Did you tell him what happened? A. Yes, I told him what happened but I didn't tell him about the killing because I didn't know it was a killing.

2620 *People's Exhibit 25.*

Q. You didn't know the man that came from behind the partition was killed? A. Not until I saw it in the newspapers.

Q. What did you tell Adolph? A. I told him I was glad he didn't go uptown. So when we got to 135th Street, the subway. I told him I didn't want him to come because there were only two girls there.

Q. Was Adolph with you when you met this man whose name you don't give me? A. Yes.

Q. Did you show Adolph the cut on your arm? A. I did.

2621 Q. And what did he say and what did you say then? A. I don't know the exact words, but I told him what happened and he told me I should go to a doctor and I thought there was a bullet left in my arm and I went in the room and I layed on the bed.

Q. Was there blood on your coat? A. Yes.

Q. Had the blood gone on your other clothes? A. Yes, suit coat, a grey suit; I had a grey suit and a tan camel overcoat.

Q. Was there blood on your suit and shirt? A. Yes.

Q. And blood on your coat? A. Yes.

Q. What kind of coat did you have? A. Tan camel overcoat.

2622 Q. What happened after that, after you showed him the wound and told him how you got it? A. Nothing.

Q. What did he do? A. He said he didn't have any money. So he told me to go to a hospital. So I thought the bullet was in my arm and I got a razor and I picked up my coat and the bullet fell out of my coat.

Q. Where was it, in your coat? A. Yes.

Q. Where did it fall out of? A. The camel hair coat.

Q. Then what happened? A. I wrapped it up with my handkerchief.

Q. You wrapped the bullet up in your handkerchief? A. No, my arm.

Q. What did you do with the bullet? A. I threw it down the toilet.

Q. Down the drain? A. At the home I was living at.

Q. What part of the house, the toilet? A. Yes.

Q. In the bowl? A. Yes.

Q. In the toilet on your floor? A. Yes. 2624

Q. Did you flush the toilet after that? A. Yes.

Q. What happened then? A. I stayed in the house a couple of days.

Q. Before that did you do anything to your arm that night bandage it or anything? A. I kept changing the handkerchief. I always keep two or three dozen handkerchiefs.

Q. Did you send Adolph to get bandage? A. No.

Q. Did he bandage your arm? A. He didn't have nothing to do with it.

Q. What did you do with the blood stains on your clothing? On your camel hair coat and your grey suit coat and on your shirt? A. I didn't do nothing. 2625

Q. Did you ask Adolph to do away with it? A. No, sir.

Q. What happened to them? A. I don't see enough use of my holding up for him.

Q. Tell me what you did? A. He went down and got me bandages and borrowed some money.

Q. Who got the bandages? A. Adolph Clark.

Q. Did he come back with the bandages? A. He did the best he could. He got some sulfa drugs that he knew about and some band aid and some peroxide.

Q. And when he came back with the peroxide and the band aids he applied them to the cut? A. Yes, sir.

Q. What happened with your camel hair coat and your shirt? A. Adolph told me he would get rid of them for me.

Q. Did he take them from your home? A. Yes.

Q. Did you ever see them again after that?
2627 A. I never saw them again.

Q. What did he say he did with them? A. He said he burned them up and he told me to stay in the house and after a couple of days I told him I would have to make my appearance on the street in case the detectives were looking for me. I just pretended I wasn't hurt and practically everyone that knew me didn't know I was hurt. Lots of people hit me and I winced and I told them I was stabbed in the arm.

Q. Who was it that pinched your arm? A. Some fellows, I wouldn't know definitely any names.

Q. This picture that you wrote on the back you said that you went into the liquor store on
2628 December 13th about 6.15 or 6.30. Are you sure of the time? A. I am almost positive.

Q. Could it have been earlier than that? A. Let me see now, no, I don't think so.

By Mr. Ryan: Mark this photograph, Exhibit I.

(Marked Exhibit I, A. Salmore, D. A. Steno., 2/7/47.)

2629

Q. Will you look at this picture and tell me what that is? A. Tell you the truth I don't remember this picture. The picture I do know is the one his legs stick out.

By Mr. Ryan: We will mark this picture Exhibit II.

(Picture marked Exhibit II, A. Salmore, D. A. Steno., 2/7/47.)

Q. Look at these pictures. A. I don't remember these pictures. I remember the two front pictures.

2630

Q. Do you remember this as a picture of the store you went into? A. Yes.

Q. Will you write it on the back with your name? A. What do I put here?

Q. If that is the store you went in on December 13th, 1946?

(Witness writes on picture.)

A. Let me see the other one and I'll see if I remember.

Q. What have you written on the back of the picture? A. I remember the store and I signed my name.

2631

By Mr. Ryan: We will mark that Exhibit III.

(Picture marked Exhibit III, A. Salmore, D. A. Steno., 2/7/47.)

A. I will tell you what I remember about this picture. I don't remember Detective Burke lying there on the floor. I remember the counter, the

partition that the boxes made or the cartons and the bunch of bottles on the right hand side where I was standing.

Q. Will you mark that picture on the back of it.

(Witness writes on picture.)

(Picture marked Exhibit IV, A. Salmore, D. A. Steno., 2/7/47.)

Q. Do you drink liquor? A. I don't use any alcohol or narcotics.

2633 Q. Were you drinking that night at all? A. I was not.

Q. You were entirely sober? A. I knew what I was doing.

Q. What's the name of the man that was with you? A. I don't remember his name.

Q. Is that you don't remember or you don't want to tell me? A. I don't remember his name.

Q. You know him as a friend? A. Not as a friend I just know him from being around the block.

Q. Didn't you know him as a friend of Adolph? A. I know him as a friend of Adolph.

Q. You don't want to tell me his name? A. I don't know his name.

2634

(Statement concluded at 9.10 P. M.)

GEORGE MOORE.

2635

People's Exhibit 26.

Statement taken at the District Attorney's Office on February 7, 1947, at 11.45 P.M. in the presence of Assistant District Attorney Ryan; District Attorney Foley; Assistant District Attorney Lechtman; Inspector Rice; Lieutenant Dinan, Detective Greene, Shield Number 1749—Homicide Squad; Arthur Salmore, Stenographer.

By Mr. Ryan.

Q. Now Moore, before around quarter to nine you made a statement to me that was taken down in stenographic notes by Mr. Salmore, the stenographer here? A. Yes. 2636

Q. Is that correct? A. Yes.

Q. That statement was typewritten? A. Right.

Q. What did you do with the statement after it was typewritten? A. I signed it.

Q. Did you read it? A. I read it thoroughly.

Q. Did you make all the corrections that you wanted to make? A. Yes.

Q. And you signed at the bottom of each page? A. Yes.

Q. That was a voluntary statement made by you? A. Every one of them.

Q. And the statement you now make is voluntary? A. Strictly. 2637

Q. And neither I nor anybody else has made any promises to you? A. No, sir.

Q. You have not been mis-treated in any way? A. That is correct.

Q. Since you have signed the statement you told me you want to make some additional changes. A. Yes.

2638 *People's Exhibit 26.*

Q. What do you want to change? A. That I am the one. That I had the gun; that no one else but me had a gun and I did the shooting.

Q. Did you fire the shots that killed Detective Burke? A. I am the one.

Q. How many bullets did you fire? A. I fired all the shots in the gun, five or six, I didn't look in the magazine.

Q. Did you have the gun with you when you came from Harlem? A. I did.

Q. You brought the gun with you to the Bronx? A. Yes.

2639 Q. Was that story that you told me about seeing some girls true? A. Yes that was true.

Q. Why did you bring the gun to the Bronx? A. I had the gun in my pocket when I was supposed to do something else; what I don't know. That was the 13th and I wasn't for it and he said, "I am going to the Bronx for a girl," and he told me two girls and I told him I would go with him. I had the gun I wouldn't say I wasn't thinking about the gun and when we got there he made the suggestion that we stick-up Ray's Liquor Store.

Q. Whose gun was it? A. The gun didn't belong to me. It belongs to another boy.

Q. What's the name of the boy it belongs to?

2640 A. Mack.

Q. Do you know his full name? A. No, I don't.

Q. Do you know where he lives? A. No, I don't know the number or nothing like that.

Q. When had you secured the gun from Mack? A. Before he went to work at three o'clock.

Q. In the afternoon of December 13, 1946? A. Yes.

2641

Q. After you came out of the store you had the gun? A. Correct.

Q. And did you have the gun as you went down in the El train and in the subway to Harlem? A. No.

Q. What happened to it? A. I gave it to him on the bridge.

Q. Who did you give it to? A. Ray.

Q. When you spoke of Raymond, is this Raymond?

By Mr. Ryan: Showing witness a picture of Raymond Horton.

2642

A. That's him.

Q. Would you mark on the back that this is Raymond's picture and put your name on the back? A. I would rather not mark it.

By Mr. Ryan: All right the stenographer will mark it and consider it as Exhibit I.

(Picture marked Exhibit I, A. Salmore, D. A. Stmo., 2/7/47.)

Q. Where was it you said you gave Ray the gun? A. On the bridge.

Q. On the bridge over the railroad tracks that you told me about before? A. Correct.

2643

Q. What did you say to him when you told him to take the gun? A. That he should take the gun I had small pockets.

Q. What type of gun was it? A. Army .45.

Q. Automatic? A. Yes.

Q. Had you looked in the magazine after you came out of the store and after you gave him the gun? A. No, sir.

2644 *People's Exhibit 26.*

Q. What did you do with the gun after you gave it to Ray? A. I forgot about the gun until I seen Adolph. I didn't tell Adolph to get the gun, I told Ray to get rid of the gun and Adolph got rid of it.

Q. How did you know if Adolph got rid of it? A. I asked him and he said he gave it back to Mack.

Q. When did he tell you that? A. The next day or the day after.

Q. You mean the day after the shooting? A. Yes.

2645 Q. December 14, 1946? A. Yes.

Q. Did you ever see Mack after that to see if he secured the gun from Adolph? A. I seen him a week later.

Q. Did you talk about the gun? A. I told him it was hot and to get rid of it.

Q. What did Mack say? A. He said it was a souvenir and he didn't want his wife to find out, he didn't want his wife to find out what I did with it.

Q. Did you tell him what you had done with the gun? A. Yes, I told him the gun was hot and a man was killed with the gun.

Q. Did you tell him what man? A. I told him to get rid of the gun as soon as possible because
2646 it was hot. I said, "If you get in a fight they would take the gun and the detectives from Ballistics could tell that the detective was killed with it.

Q. Did he tell you what he did with it? A. He said he was forced to get rid of the gun.

Q. Did you see him later on to find out what he did with the gun? A. He said everything was all right with the gun?

People's Exhibit 26. 2647

Q. Is there any other notation you want to make? A. No, sir, everything else is correct, sir.

(Statement concluded at 11.55 P. M.).

GEORGE MOORE.

People's Exhibit 27.

Statement taken at the District Attorney's Office on February 8, 1947, at 3.00 A.M. by Chief Assistant District Attorney Ryan; in the presence 2648
of Assistant District Attorney Lechtman; Detective Holt, Shield No. 763—48th Squad; Detective Greene, Shield No. 1749—Homicide Squad; Arthur Salmore, Stenographer; George C. Moore.

By Mr. Ryan.

Q. What is your name? A. Lester Haughton.

Q. Where do you live? A. 741 Jennings Street.

Q. How long have you lived there? A. Since May.

Q. How long have you lived in the Bronx? A. Since May.

Q. When you say May, you mean May of 1946? 2649
A. 1946.

Q. Did you come up to the Bronx on the evening of Friday, December 13th, 1946? A. Yes, I did.

Q. Who did you come up to the Bronx with? A. Stack.

Q. By Stack you mean this man seated here alongside of you, George Moore? A. That's him.

Q. Is he known by the nick-name Stack? A. Yes, sir.

Q. Where had you met Stack? A. 135th Street and Eighth Avenue.

Q. West 135th Street and Eighth Avenue in New York City? A. Yes.

Q. About what time had you met him that day? A. I don't remember.

Q. Well, what is your best recollection? A. About four o'clock in the afternoon.

Q. And did you meet anybody else down in Harlem when you were with Stack before you came to the Bronx? A. No, I didn't.

Q. Do you know anybody by the name of
2651 Adolph Clark? A. Yes, I do.

Q. Had you met Adolph Clark while you were with Stack? A. Oh, yes.

Q. Where had you and Stack met Adolph? A. 35th Street.

Q. The three of you met together? A. Yes.

Q. Was it by appointment? A. No we always seen one another around there.

Q. Now did Adolph Clark come up with you and Stack to the Bronx? A. No he didn't.

Q. What happened to Adolph Stack? A. Nothing he just didn't come, that's all.

Q. He stayed down in New York? A. Yes, he did.

Q. And when you met Stack did he have any
2652 gun with him? A. Yes, he did.

Q. What kind of gun did he have? A. .45 automatic.

Q. And is this the gun that he had with him, showing witness gun marked W. F. 2/8/47. A. It looks like the gun.

By Mr. Ryan: Marked U. S. Property No. 772125.

Q. And how did you know he had this gun with him when you met him in Harlem? A. He told me he had it.

Q. Did he show you the gun? A. No.

Q. Why did you and Stack come up to the Bronx? A. To try and make some money.

Q. How would you and Stack make some money? A. Stick-ups and also to see some girls.

Q. And when you left downtown did you have any particular place in mind that you were going to stick-up? A. We had this place and if the store was crowded we would stick-up some other place. 2654

Q. What store was that? A. Ray's liquor store.

Q. Where is that? A. On Webster Avenue.

Q. Near what street? A. I don't know.

Q. Did you know that store before you came up to the Bronx on December 13, 1946? A. I had seen it before but I was never inside of it.

Q. Now how did you and Stack come up from downtown to the Bronx? A. In the subway.

Q. Where did you get off the subway? A. 170th Street.

Q. 170th Street? A. Yes.

Q. And Jerome Avenue. A. Where the Eighth Avenue subway stops.

Q. How did you go there after you got off the subway? A. We walked east. 2655

Q. To where? A. Over to where we hit Webster Avenue.

Q. And then? A. Down the same street you come out from the subway.

Q. Yes? A. We walked down that way and we came to a lot of steps and we walked down there.

2656 *People's Exhibit 27.*

Q. The steps led you down to Webster Avenue? A. Down to Webster Avenue.

Q. Then what did you do? A. We walked until we saw the store.

Q. Did you lead the way? A. Yes, I knew where the store was.

Q. When you reached the store did you and Stack have any agreement or plan as to what you would do in the store? A. No.

Q. Did you talk over what each one was to do? A. No, we didn't.

Q. What happened after you reached the store?

2657 A. We went in.

Q. And I show you this picture which has been marked Exhibit I which has on the back George Moore February 7, 1947 and the words, "I entered this liquor store on December 13, 1946 at 6.15 or 6.30 o'clock," and I ask you if that is the picture of the outside of the store that you went in? A. Yes that is it.

Q. Will you write your name on the back of the picture where George has written? (Mr. Ryan hands picture to witness) If you want to you can write anything you want on there. (Witness writes on photograph)

Q. You wrote the words, "This is the store." A. Yes.

2658 Q. Will you sign your name underneath that. All on Exhibit I. Now I see you wrote your name Lester Haughton, is that your name? A. Yes, that is my name.

Q. Are you also known as Raymond? A. Yes, sir.

Q. But your correct name is Lester? A. Yes, sir.

2659

Q. After you got to Ray's Liquor Store on Webster Avenue on December 13, 1946, did you and Stack go in there? A. Yes we did.

Q. Who went in first? A. I don't know who went in first.

Q. But you both went in? A. Yes.

Q. Tell me what happened after you and Stack went in the store? A. We went in the store and said, "This is a stick-up."

Q. Who said that? A. Stack said it.

Q. Who did he say that to? A. The store keeper.

Q. Where was he? A. Behind the counter, the front of the counter, somewhere I don't know. 2660

Q. After he said that what happened? A. The detective in the back pulled out his pistol.

Q. Where did the detective come from? A. Back of the store behind the cases.

Q. And did you know the detective? A. No, I didn't.

Q. Did you know he was a detective? A. No, I didn't.

Q. Was he a small man or a big man? A. He looked to be a large man.

Q. And what happened after the detective stepped from behind the cases? A. I don't know I just ducked behind the counter. I saw a pistol and I ducked behind the counter. 2661

Q. Did Stack have a gun in his hand when you went in the store? A. Yes he did.

Q. What happened then when you ducked behind the counter? A. I just heard some shots. I didn't see what happened.

Q. How many shots did you hear? A. A bunch of them I didn't count them.

2662 *People's Exhibit 27.*

Q. And then what happened? A. Then we was outside again.

Q. You went outside of the store? A. Yes.

Q. What happened to Stack? A. He was outside too, both of us was outside.

Q. Did you get hit with any of the bullets? A. I had a cut, may be it was a bullet or a piece of glass.

Q. Where on your eye was the cut? A. Right here.

Q. Indicating his right eye brow; no, witness corrects me it is below the right eye brow and
2663 on the very upper part of the eye lid. Were you bleeding there from your right eye? A. Yes, a little.

Q. Well how did you get cut there? A. I don't know, just found out I was cut.

Q. You mentioned it might have been a piece of glass? A. Could have been.

Q. How would that happen? A. The glass was flying.

Q. Where did the glass fly from? A. Off the counter.

Q. From the bottles that were broken by bullets? A. Yes.

Q. Then what happened when you got out of the store? A. We went over, we ran around the
2664 corner somewhere.

Q. Were you leading the way? A. No, I was just running. I didn't know much about it up there; I don't know much about the Bronx. I was trying to get away, that's all.

Q. Where did you run to? A. Around some corner; I don't know the street; I don't know where it was.

Q. Then where did you go? A. Went over a bridge, I remember that.

Q. A foot bridge? A. One of those where the train runs underneath it.

Q. Over the New York Central tracks at Park Avenue? A. I believe so, yes.

Q. When you went over the bridge did you catch up with Stack? A. Yes.

Q. And did Stack catch up with you? A. We were running mostly together all the way.

Q. Did Stack say anything to you? A. If he did I didn't hear him.

Q. After you crossed the bridge over the New York Central Railroad tracks, where did you go? A. Where did I go?

Q. Yes? A. I went downtown.

Q. Did you go to a school yard before you went downtown? A. Yes, we stopped in some school yard.

Q. Did you get the gun from Stack at any time while you were running away from the store? A. Yes, I did.

Q. Where was that that he handed you the gun? A. I don't know, maybe it was in the school yard.

Q. After you came out of the school yard where did you go? A. I went downtown.

Q. How did you go downtown? A. Caught the train downtown.

Q. What train? A. Eighth Avenue subway.

Q. Where did you get that? A. First I got the crosstown trolley car and then I went and caught the Eighth Avenue subway.

Q. What crosstown trolley did you take? A. 167th Street crosstown.

Q. And you came to the Concourse? A. Yes.

2668 *People's Exhibit 27.*

Q. And you took the subway downtown? A. Yes.

Q. Did Stack come along with you as you went on the trolley car? A. No, sir.

Q. You separated? A. Yes.

Q. Where had you separated? A. Somewhere when we were running.

Q. When you came down on the crosstown trolley car you had the gun? A. Yes.

Q. Where did you have the gun? A. In my pocket.

Q. Which pocket? A. Either one of them; the
2669 right or left.

Q. Did you have an overcoat on? A. Yes.

Q. Did you have it in your overcoat pocket? A. Yes.

Q. Where did you get off, the subway? A. 135th Street.

Q. Then what did you do? A. Then what did I do?

Q. Yes? A. Nothing. I just waited around until I saw Adolph.

Q. Adolph Clark? A. Adolph Clark, I gave him the automatic.

Q. When did you meet Adolph Clark about? A. I don't know a couple of hours later; ten or eleven something around there.

2670 Q. Did you say anything to Adolph Clark when you gave him the pistol? A. Did I say anything to him?

Q. Yes? A. I told him to hold it.

Q. Say anything else to him? A. Told him that things got messed up and there was some shooting and here is the pistol.

Q. And when did you see Stack again after that? A. I saw him the next day.

Q. And where did you see him? A. At his home.

Q. Did he have anything the matter with him then? A. Yes, sir, he had an arm wound.

Q. Did you see where he had been shot in the arm? A. Yes, I saw it.

Q. Did you discuss with Stack that time about changing your clothes and destroying the clothes? A. Yes, he did.

Q. What was that talk? A. He told me to take them off.

Q. He tell you why you should take off your clothes? A. He told me to take them off because may be somebody saw us.

Q. What did you say to him? A. I told him I didn't have no more to take off—no more to put on.

Q. Is there anything else you want to tell me about what happened on December 13, 1946? A. No, sir.

Q. About any other matter? A. No, sir.

Q. This statement that you made to me is entirely voluntarily on your part? A. Yes, sir.

Q. I have made you no promises of any kind? A. No, you haven't.

Q. And you have been treated well since you have come to the District Attorney's office? A. Since I have been here, yes.

Q. And nobody has threatened you or harmed you in any way? A. Nobody has.

Q. Is what you told me the truth? A. Yes, it is.

(Statement concluded at 3.23 A. M.)

LESTER HAUGHTON.

People's Exhibit 28.

Photograph.

(Bound in opposite.)

Peoples' Exhibit 28

QUALIFICATIONS OF SPECIAL JURORS

UNDER CHAPTER 202 OF THE LAWS OF 1940

Name.....

Residence.....

Occupation..... Business.....

Business Address.....

Resided in State for.....years, and in County for.....years.

Place of Birth.....

Age.....years. Born on the.....day of..... 1.....

Naturalized in the year 1.....

At.....

I am able to read and write the English language understandingly.

I am not by law disqualified for service as a **TRIAL JUROR.**

.....

I have not been convicted of a **CRIMINAL OFFENSE** or found guilty of fraud or misconduct by the judgment of any civil court.

I do not possess conscientious opinions with regard to the **DEATH PENALTY** which would preclude me from finding a defendant guilty, if the crime charged be punishable with death.

I do not doubt my ability to lay aside opinions or impressions formed from **NEWSPAPER READING** or **HEARSAY,** and to render an impartial verdict upon evidence, uninfluenced by any such opinions or impressions.

I do not possess such opinions as would prevent my finding a verdict of guilty in any case upon **CIRCUMSTANTIAL EVIDENCE.**

I have not such a prejudice against any **LAW OF THE STATE** as would preclude my finding a defendant guilty of violating such law.

I have not such a prejudice against any particular **DEFENSE** to a criminal charge as would prevent my giving a fair and impartial trial upon the merits of such defense.

I could in all cases give to a defendant, who fails to testify as a witness in his own behalf, the full benefit of the statutory provision that his neglect or **REFUSAL TO SO TESTIFY** as a witness in his own behalf does not create any presumption against him.

.....

.....

.....

X.....

STATE OF NEW YORK, }
COUNTY OF BRONX. } ss.:

.....

being duly sworn, does depose and say, that the foregoing statements are in all respects true, and that he will make true answers to all questions put to him touching his qualifications as a Special Juror.

Sworn to before me this..... }
day of....., 19 . } X.....

.....
Secretary—Division of Jurors

SELECTED

.....
Deputy County Clerk—Bronx County

Dated....., 19

OWN HANDWRITING. THIS APPLICATION MUST NOT BE TAKEN FROM THIS OFFICE

EXAMINATION AS TO QUALIFICATIONS AS A TRIAL JUROR

Have you ever served as a trial juror in Bronx County?.....

Have you ever served as a trial juror in any other county than the Bronx?.....

Print name in full.....

Residence .....P.O. Zone No.....Apt. No.....Tel. No.....

How long have you resided at above address?.....

Former residence .....

I was born in.....
City State Country

Date of birth.....Age .....
Day Month Year

Height .....Weight .....

I have resided in this State.....years; and in the County of Bronx.....years

If naturalized, state when and where.....

Did you register at the last Election?.....

Occupation .....Are you employed at present?.....

Present business address.....Bus. Tel. No.....

Firm name .....Nature of business.....

How long have you been engaged in your present business?.....

What other business, if any, have you been engaged in during the past ten years?.....

.....

Have you ever been confined to a State Institution, State Hospital or Private Institution?.....

Have you any organic afflictions of the heart?.....Suffered any attack of epilepsy?.....

Have you ever had a stroke of paralysis?.....Have you ever been subject to vertigo?.....

Have you ever suffered any mental or physical disability?.....

Are you subject to fainting spells?.....

Are you subject to fainting spells?.....

Do you suffer from any marked nervous condition?.....

Are you employed on any Federal, State or City Public Works projects? .....

Are you on relief?.....

Are there any unpaid judgments filed against you?.....

Have you ever been in bankruptcy?.....

Have you ever made a general assignment for the benefit of creditors? .....

Where and how long did you attend school or schools?.....

.....

.....

(OVER)

ENTERED	INVESTIGATED	BALLOT

IMPORTANT: APPLICATION FOR JURY SERVICE MUST BE FILLED OUT IN THE APPLICANT'S OWN HANDWRITING. THIS APPLICATION MUST NOT BE TAKEN FROM THIS OFFICE

EXAMINATION AS TO QUALIFICATIONS AS A TRIAL JUROR

P.O. ZONE No.

Have you ever served as a trial juror in Bronx County?

Have you ever served as a trial juror in any other county than the Bronx?

Print name in full

Residence ..... Apt. No. ..... Tel. No. .....

How long have you resided at above address?

Former residence

I was born in .....
City State Country

Date of birth ..... Age .....
Day Month Year

Height ..... Weight .....

I have resided in this State ..... years; and in the County of Bronx ..... years

If naturalized, state when and where

Married? ..... Single? ..... Widow? ..... Divorced? ..... Separated? .....

If married, or widow, husband's first name and where he was born

Did you register at the last Election?

Occupation ..... Are you employed at present?

Present business address ..... Bus. Tel. No. .....

Firm name ..... Nature of business .....

How long have you been engaged in your present business?

What other business, if any, have you been engaged in during the past ten years?

Have you ever been confined to a State Institution, State Hospital or Private Institution?

Have you any organic afflictions of the heart? Suffered any attack of epilepsy?

Have you ever had a stroke of paralysis?

Have you ever been subject to vertigo?

Have you ever suffered any mental or physical disability?

Are you subject to fainting spells?

Do you suffer from any marked nervous condition?

Are you employed on any Federal, State or City Public Works projects?

Are you on relief?

Are there any unpaid judgments filed against you?

Have you ever been in bankruptcy?

Have you ever made a general assignment for the benefit of creditors?

ENTERED	INVESTIGATED	PASSED

HAVE YOU EVER BEEN SERVED A SUMMONS FOR VIOLATION OF ANY CITY ORDINANCE?.....IF SO; WHAT FOR?.....

Where and how long did you attend school or schools?.....

.....

.....

Have you ever been arrested or indicted for, or convicted of, a criminal offense?.....

Have you ever been found guilty of fraud, or misconduct, by the judgment of a Civil Court?.....

If so, mention the court.....

Do you or your husband own real estate?.....

Do you or your husband possess a bank account in excess of $250?.....

Do you or your husband own personal property, such as annuities, insurance, stocks, bonds, mortgages, etc., worth $250. in value?..... Describe the real or personal property you own.

.....

As a woman you are entitled to exemption from jury service and if you wish to serve, it will be necessary for you to waive same.

Do you waive such exemption?.....

X.....

STATE OF NEW YORK }
COUNTY OF BRONX } ss.:

.....

being duly sworn deposes and says that the foregoing answers are true to the best of her knowledge and belief.

X.....

Sworn to before me this

day of 194

2698

Stipulation as to Exhibits.

COUNTY COURT,

BRONX COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

against

GEORGE CORNELIUS MOORE,
LESTER HAUGHTON,
Defendant.

2699

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the parties to the above entitled appeal, that the following exhibits shall be printed in the record on appeal herein, to wit:

People's Exhibits 3, 4, 5, 6, 7, 25, 26, 27, 28.
Defendants' Exhibits 1, 2, 3.

IT IS FURTHER STIPULATED AND AGREED, that the printing of all of the other exhibits be dispensed with; and that in the briefs or upon the argument or the submission of the appeal herein either side may refer to any of the said exhibits
2700 with the same force and effect as if the said exhibits had been fully incorporated in this record; and that upon the argument or submission of this appeal either side may offer any of the said exhibits to the Court, with like force and effect; and

That the exhibits, the printing of which has been dispensed with, consist of the following:

1. Revolver.
2. .45 Calibre Copper Jacket Bullet.

8. Copper Shell.
9. Copper Shell.
10. Copper Shell Case.
11. Spanish Gun.
12. .45 Calibre Auto. Gun.
13. .45 Calibre Bullet.
14. .45 Calibre Bullet and Fragment Casing.
15. .45 Calibre Bullet.
16. 2 Pieces Copper Casings.
17. 2 Pieces Copper Casings and 1 Lead Collar.
18. 5 Discharged Shells.
19. .38 Calibre Lead Pellet. 2702
20. .38 Calibre Lead Pellet.
21. 1 Piece of Lead.
22. .38 Calibre Lead Pellet.
23. .38 Deformed Bullet.
24. Copper Coated .38 Calibre Bullet.

Dated, New York, May 9th, 1947.

SAMUEL J. FOLEY,
District Attorney, Bronx County.
By GEORGE TILZER,
Assistant District Attorney,
Attorney for Respondent.

JOHN F. WILKINSON, 2703
ISIDORE EHRMAN,
By J. F. WILKINSON,
Attorneys for Defendant
George Cornelius Moore.

L. SAUL FLEISCHMAN,
HENRY S. MCDONOUGH,
By F. J. DWORKIN,
Attorneys for Defendant
Lester Haughton.

2704

Affidavit of No Opinion.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JOHN F. WILKINSON, being duly sworn, deposes and says: That he is one of the attorneys for the defendant-appellant George C. Moore in this action and is familiar with all the proceedings heretofore had herein.

That no opinion was rendered by the Trial Court in rendering the judgment of conviction herein.

2705

Sworn to before me this
day of June, 1947.

2706

2707

Clerk's Certificate.

I, MICHAEL B. MCHUGH, County Clerk of the County of Bronx and Clerk of the County Court of Bronx County, do hereby certify that the foregoing is a copy of the notices of appeal and judgment roll in the case of The People of the State of New York against George C. Moore and Lester Haughton, convicted of the crime of Murder in the First Degree, now on file in the office of the Clerk of the County Court of Bronx County, and that the same have been compared by me with the originals and are correct transcripts thereof and of the whole of such originals.

2708

GIVEN under my hand and attested under the seal of this Court on the day of , 1947.

Clerk.

2709

[fol. 904] IN COURT OF APPEALS OF NEW YORK

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of November in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness, the Hon. John T. Loughran, Chief Judge, Presiding. John Ludden, Clerk.

REMITTITUR—November 21, 1947

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

ag'st

GEORGE CORNELIUS MOORE, Appellant

Be It Remembered, That on the 20th day of June in the year of our Lord one thousand nine hundred and forty-seven, George Cornelius Moore, the appellant in this action, came here unto the Court of Appeals, by John F. Wilkinson and Isidore Ehrman, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of conviction of the County Court, of the County of Bronx, and the People of the State of New York, the respondent in said action, afterward appeared in said Court of Appeals by Samuel J. Foley, District Attorney.

Which said Notice of Appeal and the return thereto, filed [fol. 905] as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. John F. Wilkinson, of counsel for the appellant, and by Mr. George Tilzer, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of conviction of the County Court, of the County of Bronx, appealed from in this action, be and is hereby in all things Affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings thereon in this Court, be remitted to the said County Court.

Therefore, it is considered that the said original judgment of conviction be and is hereby in all things Affirmed as aforesaid, and stand in full force, strength and effect.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals

aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the County Court, of the County of Bronx, before the Judges thereof, according to the form of the statute in such case made and provided.

(Signed) John Ludden, Clerk of the Court of Appeals of the State of New York.

[fol. 906] Court of Appeals, Clerk's Office,
Albany, November 21, 1947:

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(Signed) John Ludden, Clerk.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 907] In Court of Appeals of New York

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of November in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness, the Hon. John T. Loughran, Chief Judge, Presiding. John Ludden, Clerk.

Remittitur—November 21, 1947

The People of the State of New York, Respondent,

ag'st

Lester Haughton, Appellant

Be It Remembered, That on the 20th day of June in the year of our Lord one thousand nine hundred and forty-seven, Lester Haughton, the appellant in this action, came here unto the Court of Appeals, by I. Saul Fleischman and Henry McDonough, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of conviction of the County Court, of the County of Bronx, and the People of the State of New York, the re-

ondent in said action, afterward appeared in said Court
ol. 908] of Appeals by Samuel J. Foley, District Attorney.
Which said Notice of Appeal and the return thereto filed
aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this
use argued by Mr. I. Saul Fleischman, of counsel for the
pellant, and by Mr. George Tilzer, of counsel for the re-
ondent, and after due deliberation had thereon, did order
d adjudge that the judgment of conviction of the County
urt, of the County of Bronx, appealed from in this action,
and is hereby in all things Affirmed.

And it was also further ordered, that the record aforesaid,
d the proceedings thereon in this Court, be remitted to
e said County Court.

Therefore, it is considered that the said original judg-
ent of conviction be and is hereby in all things Affirmed
aforesaid, and stand in full force, strength and effect.

And hereupon, as well the Notice of Appeal and return
ereto aforesaid as the judgment of the Court of Appeals
oresaid, by it given in the premises, are by the said Court
Appeals remitted into the County Court, of the County
Bronx, before the Judges thereof, according to the form
the statute in such case made and provided.

(Signed) John Ludden, Clerk of the Court of Ap-
peals of the State of New York.

---

ol. 909] Court of Appeals, Clerk's Office,
Albany, November 21, 1947:

I hereby certify, that the preceding record contains a
rrect transcript of the proceedings in said cause in the
urt of Appeals, with the papers originally filed therein,
tached thereto.

(Signed) John Ludden, Clerk.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 910] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 222, Misc.

GEORGE CORNELIUS MOORE and LESTER HOUGHTON, Petitioners,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

On petition for writ of Certiorari to the Court of Appeals of the State of New York.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR CERTIORARI, AND TRANSFERRING CASE TO APPELLATE DOCKET—December 22, 1947

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is ordered transferred to the appellate docket.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petition not printed.

No. 485

GEORGE CORNELIUS MOORE AND LESTER HAUGHTON,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent

BRIEF FOR PETITIONERS

JOHN F. WILKINSON and
ISIDORE EHRMAN,
Attorneys for Petitioner George Cornelius Moore.
I. SAUL FLEISCHMAN and
HENRY McDONOUGH,
Attorneys for Petitioner

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 485

GEORGE CORNELIUS MOORE AND LESTER HAUGHTON,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent

BRIEF FOR PETITIONERS

I

The Opinions of the Courts Below

The trial Court rendered no opinion.

The Court of Appeals of the State of New York affirmed the judgment of conviction in the Bronx County Court rendering no opinion.

The defendants argued in the Court of Appeals and included in their brief the points that the decision of the trial Court in granting the motion of the People for a special jury and in overruling the challenges of the defendants to the special jury panel constituted a denial of due process

and a violation of their rights under the Fourteenth Amendment of the Constitution of the United States.

II

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. A. Sec. 344).

III

Statement of the Case

A

Petitioners were indicted by the Grand Jury of the County of Bronx at the February, 1947, Term of the County Court on February 11, 1947, for the crime of Murder in the First Degree, which indictment was filed in the office of the Clerk of the County of Bronx on the 11th day of February, 1947 (R. 5-7). Thereafter and on February 25, 1947, a motion was made by the District Attorney of the County of Bronx for an order that the issues be tried by a Special Jury. Said motion was granted after opposition by counsel for the petitioners (R. 13). On the 3rd day of March, 1947, in compliance with the order 150 names were drawn as a panel of Special Jurors from which a jury was to be selected to try the issues herein. A Challenge was made to the panel of Special Jurors on behalf of the petitioners on the grounds among others that:

1. Sec. 749-aa of the Judiciary Law of the State of New York is in violation of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States.

2. That qualified Negro jurors were improperly excluded from the list of Special Jurors from which said jury panel was drawn (R. 25-29).

Testimony was taken on the charges contained in the Challenge (R. 40-48), and at the conclusion thereof the Trial Court denied the Challenge to which petitioners' counsel excepted. On April 2, 1947, the jury returned with a verdict of guilty for each of the petitioners (R. 8). On April 14, 1947, the petitioners were sentenced to the punishment of death (R. 9-10).

IV

Specification of Errors

The trial Court erred in denying petitioners challenge to the special jury panel inasmuch as:

1. The trial of petitioners by a special jury as distinguished from a general, or ordinary jury, denied petitioners the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the Federal Constitution, and the statute authorizing the empanelling of special juries (Judiciary Law, Sec. 749aa) is accordingly unconstitutional and void as applied to them.

2. Section 749aa of the Judiciary Law of the State of New York is unconstitutional and void as applied to petitioners in that it denied the petitioners the due process of law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States. This statute sets forth no standard to guide those charged with the selection of special jurors and therefore enabled these officials in Bronx County to use the same list of approximately 800 special jurors in a county of 1,489,000 population, thereby denying to petitioners the equal protection of laws guaranteed to them by the Federal Constitution.

3. The trial of the petitioners by a jury from which qualified Negros were systematically, intentionally and deliberately excluded as such denied petitioners the equal pro-

tection of the laws guaranteed to them by the Fourteenth Amendment of the Federal Constitution.

V

ARGUMENT

Point I

Section 749aa of the Judiciary Law of the State of New York is unconstitutional and void as applied to the petitioners, in that it denies them the due process and equal protection of law guaranteed to them by Section I of the Fourteenth Amendment to the Constitution of the United States.

The petitioners were tried before a jury of Special Jurors pursuant to Section 749aa of the Judiciary Law of the State of New York.

The petitioners opposed the motion for an order for a panel of Special Jurors, which motion was returnable in Bronx County Court on the 21st day of February, 1947.

In addition thereto, before the commencement of the trial of said action the petitioners filed with the Court a written challenge to the Special Panel of Jurors, on the grounds (1) that the jury drawn pursuant to Section 749aa of the Judiciary Law is unconstitutional; (2) that qualified women jurors were improperly excluded from the Special Panel; (3) that qualified Negroes were improperly excluded from the Special Panel.

The Court took judicial notice of the fact that no Negroes were included in the Special Panel of 150 jurors for the trial of this action (R. 49).

The trial of the petitioners by a special jury has not only deprived them of their constitutional right to trial by a general jury, but has deprived them of the right to life

itself. The right to be tried by a general jury belonged to them, not because they were Negroes or members of any particular race or creed, but because they were citizens of the State of New York and of the United States, and because they were human beings. As such, they were entitled to all the respect and fair dealing that befits the dignity of man, a dignity that is recognized and guaranteed by the Constitution of the United States.

That respect and fair treatment, which is guaranteed by the Constitution of the United States to all human beings, was denied to the petitioners because they were not afforded the same treatment given to other defendants in criminal cases in the County Court of the County of Bronx who are tried by a general jury. Compelling the petitioners to go to trial before a special jury by virtue of Section 749aa of the Judiciary Law deprived them of equal protection under the law.

Year after year the special jury has been condemned by the bench, bar and lay community, because the special jury does not represent a cross section of the community and because the special jury is so constituted as to be convicting jury. In his message to the New York Legislature on January 14, 1941, former Governor Lehman vigorously urged the abolition of "blue ribbon" juries declaring them to be "at war with our basic concepts of a democratic society." He stated:

> "I recommend that blue ribbon juries be abolished. These special juries are used only in the Counties of New York, Bronx, Kings, Queens and Westchester. This in itself is untenable. There is no reason why special juries should be used in one part of the State and not in another—if the practice is sound.
>
> However, I do not believe the practice is sound. The use of special or so-called blue ribbon juries is not consonant with the preservation of the constitutional

right to a trial by a jury of peers. It is at war with our basic concepts of a democratic society.

It is well known that blue ribbon juries are chosen to be convicting juries. This is demonstrated by a special study made by the Judicial Council. This study clearly establishes that the percentage of convictions to acquittals is much higher in cases tried by special juries than in cases tried by ordinary juries. While blue ribbon jurors are taken from the ordinary jury list, unlike other jurors, they are given a personal interview by the Commissioner of Jurors. Thus, by a process of eliminating jurors who have previously served on blue ribbon juries which have ended in acquittal or disagreement, special juries are particularly selected to be convicting juries. To say the least, such a practice is inexcusable. That it exists is borne out by the facts.

It has been urged by prosecuting officials of the five counties affected that our ordinary juries are not of sufficiently high caliber. If that was ever true, it is not true today. Recently we have removed most jury exemptions and empowered women to serve on all juries. Many new administrative improvements have been adopted, particularly in New York County, and these same improvements are now being adopted in all other counties in New York City. Today it is more than ever unjust and unnecessary to select special juries in specific cases. Blue ribbon juries should be abolished."

Special panels, aptly called "Lord Jeffreys" juries, have been condemned by the Judicial Council of the State of New York in its Annual Reports from the Third to date. The Fourth Annual Report of the Judicial Council eloquently summarizes the reasons urged in its Annual Reports from the Third to the Thirteenth, the latest, for the abolition of special juries. In its Fourth Annual Report (Legislative

Document No. 48, 1938) the Judicial Council stated (pp. 46-48):

"ABOLITION OF SPECIAL JURIES

The Judicial Council has been attempting to improve the general jury system to such a point that extraordinary juries of any kind will no longer be necessary. To this end, the Council recommended women jurors, limitations on jury exemptions, and the abolition of struck, foreign and special juries, all of which recommendations were put into effect, except the abolition of special juries. Upon reconsideration and further study, the Council renews its recommendation for the abolition of special juries. These, popularly known as 'blue ribbon' juries, are confined to the Counties of New York, Bronx, Kings, Queens and Westchester.

The special jury, although designed to provide more intelligent and capable jurors in exceptional cases, both civil and criminal, does not necessarily bring about the desired result. The jurors composing it are chosen from the ordinary jury list. The only method of choice distinguishing special from ordinary jurors is a personal interview of each special juror with the Commissioner of Jurors. The questions put by the Commissioner of Jurors to the prospective special jurors to determine their eligibility are similar to those usually put to an ordinary juror by counsel.

A more serious charge than its uselessness has been levelled at the special jury. It has been suggested that, by a process of eliminating jurors who have previously served on a special jury which has ended in acquittal or disagreement, special juries are particularly chosen to be convicting juries. Data gathered by the Judicial Council on the use of special juries during the five year period July 1, 1932 to June 30, 1937, in the counties of New York, Bronx, Kings and Queens, indicate that special juries are prone to convict. During the period studied, of 383 defendants tried before special juries, 78 per cent were convicted and 22 per cent were acquitted. It should be noted that in the 383 cases, only

five defendants demanded a special jury. In all other cases, the application was made by the people.

To compare the special with the ordinary juries, a study was made of all homicide cases, except those involving negligence or automobiles, tried during 1933 and 1934. The percentage of convictions to acquittals was much higher in cases tried by Special juries than in cases tried by ordinary juries. During the calendar year 1933, of the 47 defendants tried for homicide before special juries 83 percent were convicted and 17 percent were acquitted. During the same period, of 156 defendants tried for offenses of the same grade by ordinary juries, 43 percent were convicted and 57 percent were acquitted. In 1934, of 72 defendants tried before special juries, 82 percent were convicted and 18 percent were acquitted, while of 191 tried by ordinary juries, 37 percent were convicted and 63 percent were acquitted (see Table II below).

It is significant also that the percentage of defendants pleading guilty to a lesser offense was much higher in cases to be tried before special juries than those to be tried by ordinary juries. In 1933, for example, 26 percent of 47 defendants to be tried before special juries and only 9 percent of the 156 defendants to be tried before ordinary juries pleaded guilty to a lesser offense. In 1934, 39 percent of 72 defendants and 2 percent of 191 defendants to be tried before special and ordinary juries respectively, pleaded guilty to lesser offenses. Thus, defendants to be tried before special juries seem to realize that their chances of complete acquittal are much less than if they were to be tried before ordinary juries.

The Judicial Council believes that every petit jury should be of uniformly high calibre and capable of giving a fair trial in all cases. To attain this goal, the ordinary jury, as now provided, may be in need of improvement. It is, however, unjust and should be unnecessary to select supposedly special juries in specific cases.

The tables of data from which the above information is taken follow:

I

Disposition of Criminal Cases in Which Special Juries Were Ordered in the Counties of New York, Bronx, Kings and Queens, July 1, 1932–June 30, 1937.

County	Defendants	Convicted offense charged	Convicted lesser offense	Pleaded guilty	Total convicted	Acquitted indictment dismissed, discharged from custody
New York	202	61	28	62	151	51
		30%	14%	31%	75%	25%
Bronx	43	20	1	16	37	6
		47%	2%	37%	86%	14%
Kings	103	45	17	23	85	18
		44%	17%	22%	83%	17%
Queens	35	5	7	14	26	9
		14%	20%	40%	74%	26%
Totals	383	131	53	115	299	84
		34%	14%	30%	78%	22%

II

Disposition of Homicide Cases Other Than Those Involving Negligence or Automobiles in the Counties of New York, Bronx, Kings and Queens, January 1–December 31, 1933 and January 1–December 31, 1934.

	Special Jury				Ordinary Jury*			
	1933		1934		1933		1934	
	No.	%	No.	%	No.	%	No.	%
Defendants	47	....	72	....	156	....	191	....
Convicted, offense charged	17	36%	15	21%	53	34%	67	35%
Convicted lesser offense	10	21%	16	22%				
Pleaded guilty to lesser offense	12	26%	28	39%	14	9%	4	2%
Total convicted	39	83%	59	82%	67	43%	71	37%
Acquitted, indictment dismissed, discharged from custody	8	17%	13	18%	89	57%	120	63%

* Figures obtained from Department of Correction."

The Judicial Council has not since its Fourth Annual Report published statistics to indicate the percentage convictions in special jury cases as compared to general jury

cases. However, its subsequent Annual Reports from the Fifth to the Thirteenth Annual Report, the latest, contain tables of the disposition of criminal cases in the County Courts of the City of New York covering a period from July 1, 1937 to June 30, 1946. A study of these tables reveals that between July 1, 1937 and June 30, 1946, in the County Court of Bronx County there were 285 convictions to 208 acquittals by jury, making a total of 493 cases disposed of by jury trial. Since this total represented convictions and acquittals both by general juries and special juries, it became necessary for the writers to search the records of the Clerk of the County Court of Bronx County to determine the number of convictions and the number of acquittals by special juries. The writers found that between July 1, 1937 and June 30, 1946, there were fifteen convictions and four acquittals by special juries.

Deducting 15, the number of convictions by special juries from 285, the total number of convictions by juries, both general and special, leaves 270 as the total number of convictions by general juries.

Deducting 4, the number of acquittals by special juries from 208, the total number of acquittals by juries both general and special, leaves 204 as the total number of acquittals by general juries. Expressed in percentages it can, therefore, be said that from July 1, 1937 to June 30, 1946, there were 79% of convictions by special juries as compared to 57% of convictions by general juries. This disparity in convictions as evidenced by the above percentages becomes important in that it proves that special juries continue to be convicting juries, and as such a trial of the petitioners by a special jury was a denial of their constitutional rights to equal protection and due process of law.

In the cases of Fay v. New York (No. 377) and Bove v. New York (No. 452) decided June 23, 1947 by the Supreme

Court of the United States and reported Supreme Court Law and ed. Advance Opinions 1946-47, Vol. 91—No. 17, this Court considered the constitutionality of special panels in the State of New York. In a five to four opinion Mr. Justice Jackson writing for the majority stated as follows (p. 1530):

> "If it were proved that in 1945 an inequality between the special jury's record of convictions and that of the ordinary jury continued as it was found by the Judicial Council to have prevailed in 1933-1934 some foundation would be laid for a claim of unequal treatment."

The Court further stated (p. 1531):

> "A state is not required to take all cases of offense to the same forum. But a discretion, even if vested in the court to shunt a defendant before a jury so chosen as greatly to lessen his chances while others accused of a like offense are tried by a jury so drawn as to be more favorable to them, would hardly be equal protection of the laws."

And further stated (p. 1531):

> "But a ratio of convictions so disparate, if it continued until 1945, might, in absence of explanation be taken to indicate that the special jury was, in contrast to its alternate, organized to convict. A defendant could complain of this inequality even if it were shown a special jury court never had convicted any defendant who did not deserve conviction."

The writers by a study of the reports of the Judicial Council from the Fifth to the Thirteenth Annual Report and by their independent investigation of the records of the Clerk of the Bronx County Court have shown that there continues to be a disproportionate ratio of convictions between special juries and general juries.

It can, therefore, be argued without contradiction that special juries remain convicting juries and the trial of the

petitoners by a special jury was a denial of equal protection and due process of law.

> "It has been said that the abolition of special juries will result in too great a loss of time at the trial of actions where the crime charged is punishable by death, by reason of the possible drawing of jurors opposed to capital punishment. This matter, however, has been taken into account under the revised jury system in section 597 of the Judiciary Law which reads as follows:
>
> Sec. 597. Juror with scruples against death penalty. No person shall be selected as a grand juror or as a trial juror in a criminal action where the crime charged is or may be punishable by death, who has stated to the county clerk in his examination under oath as required, that he has conscientious scruples against the death penalty and that such scruples would prevent him from returning an indictment, or returning a verdict of guilty, of murder in the first degree. Such scruple shall not, however, hinder the selection of such person to serve as a trial juror in any civil action or in any criminal action other than that specified above. (Added L. 1940, ch. 202, effective Sept. 1, 1940.)
>
> This section applies to all trial and grand jurors throughout New York City and was included specifically to save time in the examination of jurors by attorneys. It has proven successful in Richmond County, which has no special jurors." (1940 Reports, Memo No. 65, p. 169 of the Committee on Criminal Courts, Law and Procedure of the Association of the Bar of the City of New York.)

The testimony herein indicates that there are no special qualifications required by special jurors as distinguished from general jurors. General jurors, who are not opposed to capital punishment are qualified as special jurors. This is supported by the testimony of an employee of the Division of Jurors, Office of County Clerk, Bronx County, who

supervises the compiling of the list of special jurors (R. 42-43):

"Q. What are the requirements according to your office of a special juror? A. That they not be opposed to capital punishment.

Q. Is that the only requirement? A. That's the only one.

. . . . . .

Q. The only thing you are interested in when you accept him as a special juror is that he be not against punishment? A. Free of that; yes, sir."

The Trial Court, therefore, erred in denying petitioners challenge to the special jury panel inasmuch as the trial of the petitioners by a special jury as distinguished from a general, or ordinary jury, denied petitioners equal protection of the law guaranteed to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the statute authorizing and impanelling special juries (Judicial Law, Section 749aa) is accordingly unconstitutional.

Point II

Section 749-aa of the Judiciary Law of the State of New York is unconstitutional and void as applied to petitioners in that it denied the petitioners the due process of law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States. This Statute sets forth no standard to guide those charged with the selection of special jurors and therefore enabled these officials in Bronx County to use the same list of approximately 800 special jurors in a county of one million four hundred eighty-nine thousand population for nine years to the grave prejudice of the petitioners.

Section 749-aa of the Judiciary Law of the State of New York became effective on April 7th, 1938. In the year 1938,

pursuant to said section, approximately 800 jurors were selected as a panel of Special Jurors from which trial juries were drawn to try criminal cases.

From 1938 when they were selected to the present date, these 800 special jurors have been called upon from time to time to be trial jurors in criminal cases in which the District Attorney requested a trial by special jury.

This is supported by the testimony of William F. Fischer, a clerk in the Division of Jurors Office of the County Clerk of Bronx County, who supervises the compiling of the special jury list (R. 44).

> "Q. Who strikes out the names from the special jurors list? A. It is an office routine, an office mechanics. If a person moves from the county it is stricken off. If a person is deceased it is stricken off.
>
> Q. Do you keep the same names on the special juror panel from year to year? A. We do.
>
> Q. And do you keep a record of their service? A. We do.
>
> Q. And do you keep a record of their convictions? A. No, sir; that's something we wouldn't know."

In a County with a population of 1,489,000 (The World Almanac and Book of Facts for 1947, published by the New York World Telegram), the District Attorney has for the past nine years prosecuted criminal cases by special jury before the same 800 special jurors.

The Division of Jurors Office keeps a record of the service of these jurors (R. 44). The denial therefore of the Clerk from the Division of Jurors Office that no record is kept as to how these special jurors voted in specific cases in which they were trial jurors (R. 44), can be discounted in view of his statement that a record of their service is kept.

The District Attorney moves the trial of specific cases by a special jury. It therefore becomes a simple matter for

the Division of Jurors and the District Attorney to determine from the date when a special juror served, the specific case in which he served and whether a conviction or acquittal resulted.

The District Attorney therefore comes forearmed with a knowledge of the record of each special juror as to his vote for convictions in previous cases in which said special juror acted. It simplifies his task of selecting convicting special jurors in impaneling a special jury for a case on trial. No defendant or his counsel in Bronx County has the opportunity afforded the District Attorney of obtaining this information which is made available to the District Attorney because of the fact that the 800 special jurors have been the same for the past nine years.

These self-same special jurors appearing before the same District Attorney year after year cannot help but be impressed with the thought that they are a branch of the District Attorney's Office, and accounts for the high percentage of convictions by special jurors as compared to ordinary juries.

The Negro population of Bronx County in 1940 was 23,529 (U. S. Department of Commerce, 16th Census of the U. S. 1940). The most recent survey of the Negro population of Bronx County is 192,066 (letter dated, January 23, 1948, Mayor's Committee on Unity of New York City, Appendix D.).

This increase of 168,537 Negroes in Bronx County since 1940 has been given no recognition in so far as special jurors are concerned. The Division of Jurors of the County of Bronx continues to use the same special jurors of approximately 800, that it has been calling for special jury duty since 1938.

The petitioners herein were tried by a special jury selected from this panel of 800 jurors, who had nine years of service as special jurors.

To force these petitioners to be tried before a jury selected from a group that has been functioning for over nine years as special jurors to the exclusion of other citizens and peers of the petitioners, and whose only call to duty is when the District Attorney deems it expedient to try a case before them, is not a trial by a jury of their peers and violates the Constitution of the United States.

"A State is not required to take all cases of offense to the same forum, but a discretion, even if vested in the court to shunt a defendant before a jury so chosen as greatly to lessen his chances while others accused of a like offense are tried by a jury so drawn as to be more favorable to them, would hardly be equal protection of the laws." (*Fay v. New York supra.*)

Point III

The trial of the petitioners, Negroes, by a jury selected from a panel from which Negroes were systematically, intentionally and deliberately excluded, denied petitioners the equal protection of law and due process of law guaranteed them by the Constitution of the United States.

The Fourteenth Amendment in addition to due process and equal protection clauses, declares that "Congress shall have power to enforce, by appropriate legislation, the provisions of this Article." So empowered, the Congress on March 1, 1875, enacted that "no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States or of any State, on account of race, color, or previous condition of servitude" (March 1, 1875) 18 Stat. 336, 337, c114, 8 U. S. C. A. sec. 44, 2 F. C. A. title 8, sec. 44.

The Supreme Court of the United States has many times held that the deliberate and intentional exclusion of Negroes

from trial juries or grand juries, whether by State Statute or by action of State officials, violated the equal protection laws of the Fourteenth Amendment. *Strouder* v. *West Virginia*, 100 U. S. 325; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400.

The Supreme Court held in these cases that the equal protection laws entitled Negro defendants to the chance, unaffected by any element of deliberate discrimination, of having Negroes on the juries which try them. Petitioners as Negroes and human beings endowed with all the rights specified in the Constitution can claim that no racial exclusion shall enter into the selection of any jury that tries them.

We are dealing here with a subtle and sophisticated form of discrimination which does not lend itself to easy or precise proof. Certainly the witness from the County Clerk's Office of Bronx County will not readily admit that Negroes are discriminated against in the selection of special jurors. However the facts eloquently evidence that there is such discrimination.

The testimony indicates that there is no way of ascertaining the number of Negroes on the special jury panel if any at all. (R. 43).

> "Q. How many special jurors are there in the County of Bronx? A. We have approximately 784 or 783. Q. Will your records indicate how many of the 784 are Negroes? A. No, sir. There is no way of determining that. A juror is a juror, white or black, race or creed, man or woman. Q. Will your records indicate how many of those are Negroes? A. No, sir."

William F. Fischer, a clerk in the Division of Jurors Office of the County Clerk of Bronx County, who supervises

the compiling of a special jury list hazarded a guess that of 500 Negro jurors examined for jury duty approximately twelve were selected as special jurors on a special jury panel of 783 or 784 (R. 45).

The Court took judicial notice of the fact that there were no Negro jurors on the special panel of 150 jurors from which the trial jury was drawn (R. 49).

It is impossible that chance or accident alone could have brought about the selection of so few Negroes from among the hundreds which it is alleged were examined. It is impossible that in a County with a total population of 1,489,000 (World Almanac and Book of Facts, 1947, published by New York World Telegram, Pg. 1912) and with a Negro population of 192,000 (letter dated January 23, 1948, Mayor's Committee on Unity of New York City, Appendix D), which Negro population comprises 13% of the total population of Bronx County, a mere handful if any at all were found to be qualified for special jury duty.

As was stated in *Smith* v. *Texas,* 311 U. S. 128 pages 130 and 131; "The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not merely promised.

"Here, the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to provide any group thought by the law's administrators to be undesirable. And from the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris County. Chance and accident alone could hardly have brought about the listing

for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

The Court further stated on page 132:

> "If there has been discrimination, whether accomplished ingeniously or ingenuously the conviction cannot stand."

Conclusion

The Judgment appealed from should be reversed.

Respectfully submitted,

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APPENDIX A

Section 749aa of the Judiciary Law of the State of New York

Sec. 749-aa. Special jurors in certain counties.

1. List of special jurors. The county clerk of each county of the state having a population of one million or more inhabitants, according to the last preceding federal census, shall select from the persons qualified to serve as trial jurors in such county such number of special jurors as the justices of the appellate division of the Supreme Court, or a majority of them of the department in which such county is situated shall, from time to time direct. The names of the persons so selected liable to serve as special jurors shall be entered in suitable books alphabetically arranged, with their places of business and the residence of each. Such county clerk, from time to time, may cancel such list and select other special jurors in their places. Persons who are selected as aforesaid by such clerk to act as special jurors shall be exempt from all other jury duty from and after the date of their selection, and they shall remain so exempt so long as they continue to be such special jurors.

2. Persons ineligible. No person shall be selected as such special juror who is by law disqualified or who claims and is allowed exemption from service as a trial juror, or who has been convicted of a criminal offense, or found guilty of fraud or other misconduct by the judgment of any civil court or who possesses such conscientious opinions with regard to the death penalty as would preclude his finding a defendant guilty if the crime charged be punishable with death, or who doubts his ability to lay aside an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression, or whose opinion as to circumstantial evidence is such as would prevent his finding a verdict of guilty upon such evidence, or who avows such a prejudice against any particular defense to a criminal charge as would prevent his giving a fair and impartial trial upon the merits of such defense, or who

avows that he cannot in all cases give to a defendant who fails to testify as a witness in his own behalf the full benefit of the statutory provision that such defendant's neglect or refusal to testify as a witness in his own behalf shall not create any presumption against him.

3. Examination as to fitness; subpoena; punishment for disobedience. No person shall be selected as a special juror until he shall have been examined personally by the county clerk, his deputy or secretary as to his qualification and fitness to serve as a special juror. Such county clerk may issue a subpoena requiring any person within such county to attend before him, his deputy or secretary at a time specified for the purpose of testifying concerning the qualification or fitness of himself or any other person to serve as a special juror, and the propriety of the selection of such special juror. A person so subpoenaed must attend and testify accordingly. In case of his failure to attend and testify as required by such subpoena, or a refusal to be sworn, or to answer any legal or pertinent question, he shall be punished therefor by any justice of the supreme court as contempt of court. All of the provisions of sections four hundred four through four hundred fourteen of the civil practice act, sections twenty-five and twenty-six of the civil rights law, are made applicable to the enforcement of the provisions of this subsection, except that no fees are required to be paid to any person so subpoenaed. The county clerk, in the record made by him of the jurors selected as such special jurors, shall enter the age of each special juror so selected, his business or vocation; if any, the length of his residence in the state and county and, if naturalized, the date of his naturalization. Such record shal be a public record and shall be open to inspection.

4. Application for special jury. Whenever an issue of fact has arisen in any civil or criminal action triable in a county embraced within the provisions of this section, the district attorney, or the defendant, if in a criminal action, or either party in a civil action may apply for a special jury to try such issue. Such application may be made at any term of the supreme court appointed to be held within the county where such issue is triable, or at any term of any

other court of record in which court such issue is to be tried. It must be made upon the indictment, the plea thereto and an affidavit in a criminal action or the pleadings and affidavit in a civil action upon two days' notice to the adverse party or his attorney. Where, upon such application, it appears to the court that by reason of the importance or intricacy of the case, a special jury is required, or that the subject-matter of the indictment or the issue to be tried has been so widely commented upon that the court is satisfied that an ordinary jury cannot without delay and difficulty be obtained to try such issue, or that for any other reason the due, efficient and impartial administration of justice in the particular case would be advanced by the trial of such an issue by a special jury, the court to which the motion is made may make an order directing that such trial be had by a special jury, and such trial shall be had accordingly. The order must specify the time when the drawing of such special jury shall take place and the number of special jurors to be then drawn, the term of the court and particular day in the term when such special jury must attend. The day so specified for the attendance of the special jury must, except in the case of an order for additional special jurors drawn under subsection six of this section, be at least five days in addition to any Sunday, holiday or half holiday, after the day specified for the drawing of the special jury.

5. Drawing; notification of jurors. At the time specified in the order the special jury shall be drawn at the office of the county clerk as provided in section six hundred and two of this chapter. A minute of the drawing must be kept by the county clerk, or his deputy, which must be entitled in the action in which the jury is to serve specifying the term of court and the particular day in the term when the special jurors so drawn must attend; and there must be entered thereon the name of each juror drawn. Such minute must be signed by the judge or justice and by the county clerk, or his deputy, present at the drawing and such minute so signed must be filed in the office of such county clerk. Such county clerk must notify each juror therein named in the manner provided for trial jurors, except that provisions as to intervals of time with regard to the notification of trial

jurors shall not apply. Before the day specified for the attendance of the special jurors the county clerk must file with the clerk of the trial court, part or term at which the juror is required to attend, a certified copy of the minute with a return indorsed thereon or annexed thereto specifying the manner in which each juror was notified and the time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom such service shall have been made, stating the manner, time and place of such service shall accompany such return.

6. Additional jurors; drawing. If the panel of the special jurors thus drawn shall be exhausted before a jury is completed, or if the trial court shall be of the opinion that additional special jurors will probably be needed to complete the jury, the trial court may, from time to time, direct that such additional special jurors be drawn for the trial as it may deem expedient. The order must specify the number to be drawn, the time of the drawing and the time when such additional jurors shall be required and notified to attend. Such additional drawing shall be made by the same officers authorized to draw the special jurors, either in open court in the presence of the judge or justice presiding at the trial, or at the office of the county clerk as prescribed in such order, and shall be conducted in the same manner as the original drawing and a minute thereof kept and certified as prescribed for the original drawing, and the jurors so drawn shall be summoned in the same manner as those originally drawn.

7. Challenges; trial. The parties to such an action shall have the same number of peremptory challenges and the same challenges for cause to be tried in the same manner as upon a trial with an ordinary jury. The rulings of the trial court, however, in admitting or excluding evidence upon the trial of any challenge for actual bias shall not be the subject of exception. Such rulings and the allowance or disallowance of the challenge shall be final. Upon the formation of a special jury as hereinbefore provided the issue must be tried by such jury as prescribed by the code of criminal procedure or the civil practice act with respect

to a jury trial in a criminal or civil action with an ordinary jury.

8. Revision of list. In each county of the state to which this section applies, the names selected and composing the special jury list heretofore compiled, shall be the special jury list for such county subject to such revision thereof by striking therefrom and adding thereto the names of such jurors as from time to time the county clerk shall deem proper.

9. Appellate division to make rules. The justices of the appellate division of the supreme court of the department embracing the county in which such special jury list shall be constituted shall make such rules and regulations not inconsistent with the provisions of this section as shall be necessary to regulate the making of the application for a special jury under the provisions of this section for the drawing and attendance of such jurors and for the proper and efficient enforcement of the provisions of this section.

10. Violations of section or rules, penalty. Any violation of this section, or of such rules and regulations prescribed by the appellate division of the supreme court shall be deemed a contempt of court under section seven hundred fifty of the judiciary law and such rules and regulations may be enforced as if a violation thereof were such a contempt as provided by section seven hundred fifty-one of the judiciary law.

APPENDIX B

Further Provisions of the Judiciary Law of the State of New York Relating to Jurors in Bronx County

Sec. 590. County clerk to select, draw, summon and empanel jurors.

The county clerks of the counties included within a city having a population of one million or more shall select, draw, summon and empanel all jurors for all courts within their respective counties and shall decide upon their qualifications and exemptions, in the manner prescribed by this

article, article eighteen-B of the judiciary law, those sections of the code of criminal procedure regarding grand jurors, or the rules adopted pursuant thereto. But this section shall not operate to impair the right to challenge a particular juror at a trial.

Sec. 591. County jury board.

There shall be established for each county of a city having a population of one million or more a "county jury board" which shall consist of the presiding justice of the appellate division of the supreme court for the department embracing the county, or his designee from among the justices of the court, a justice of the supreme court residing in the county to be designated by the justices of the appellate division for the department embracing the county, one judge of the court of general sessions or of the county court residing in the county, to be designated by the justices of the appellate division of the department embracing the county, and the county clerk of the county. Such designations, except of the county clerk, shall be made in writing, filed in the office of the county clerk, and shall continue in effect until changed.

In the counties of New York and Bronx, the mayor of the city of New York shall also be a member of the county jury board.

The county jury board shall exercise the powers and duties in regard to the selection of grand jurors as prescribed by section two hundred and sixty-seven-aa of the code of criminal procedure.

The county clerk shall also consult with the county jury board in regard to the proper and efficient administration of the jury system.

Sec. 592. Appellate divisions to make rules.

The justices of the appellate divisions of the supreme court in the first and second judicial departments, or a majority of such justices, acting jointly, shall adopt and may from time to time amend and rescind rules not inconsistent with statute, to regulate the time, manner and practice of examining, selecting, drawing, summoning and em-

paneling jurors, and the number of each to be selected, drawn and empaneled in and for the several courts within the counties of a city having a population of one million or more, and in addition to regulate in any other respects the duties enjoined by law on the county clerks and on the county jury boards in such counties with respect to the administration of the jury system.

Sec. 593. Specific power and duties of county clerk.

The county clerk shall be an officer of all courts of record located in the county in which he acts and shall have authority to administer oaths or affirmations in relation to any matter relating to his duties under this article, article eighteen-B of the judiciary law, those sections of the code of criminal procedure regarding grand jurors or the rules adopted pursuant thereto.

He shall keep a record of all proceedings before him, or in his office.

He must furnish a copy of each paper filed or proceedings taken in his office, to any person applying therefor and paying the fees, except that answers, data and information obtained in interviewing and examining prospective jurors shall be considered confidential and shall not be disclosed except as permitted by the appellate divisions. The county clerk shall charge the same fees for furnishing copies of papers as the clerk of a court of record, and shall pay over all such fees to the treasurer of the city of New York.

The county clerk may designate from among the members of his staff, by a certificate filed in his office, any deputy or assistant to perform any of his duties with respect to jurors as required by law.

Whenever reference is made to the county clerk in this article, article eighteen-B of the judiciary law, those sections of the code of criminal procedure regarding grand jurors or the rules adopted pursuant thereto, such reference shall be deemed to apply also to deputies or assistants duly designated by him except where the contrary intent is plainly apparent from the context.

In accordance with the law and pursuant to the rules of the justices of the appellate division, each county clerk shall:

(1) make personal examination of individuals concerning their eligibility or the eligibility of others for jury service, and for that purpose to issue and enforce notices, mandates and subpoenas,

(2) hear and determine claims for exemption from jury service within the county,

(3) prepare ballots for qualified jurors,

(4) draw panels of jurors for regular and adjourned terms of court.

(5) notify and summon jurors drawn for service,

(6) take any steps necessary to bring about the punishment of those who violate the laws and rules relating to the drawing, selection, summoning and empaneling of jurors,

(7) consult with the county jury board as provided in section five hundred and ninety-one of this article, and

(8) do all things necessary and proper for the true execution of his powers and duties.

Sec. 594. Source of names.

The county clerk, in order to ascertain names of persons eligible as jurors, may consult the latest census enumeration, the latest published telephone or city directory, the records of the department of taxes and assessments, the voters' registry list and any other available sources.

Each public officer of a city having a population of one million or more shall upon request at all times furnish to the county clerk of the county in which such public officer acts, without charge, all information within his control to enable such county clerk to procure the names of persons eligible to serve as jurors, as well as information concerning a person's qualifications or lack of qualifications for jury service.

Sec. 595. Examination as to fitness; personal interviews; police records.

No person's name shall be entered on a jury list unless (a) he has been personally interviewed by the county clerk, (b) he has stated his qualifications under oath, (c) his name has been forwarded to the police department for checking against the records of that department and a report received or a reasonable time has elapsed without such a report, and (d) the county clerk, in the case of grand jurors, shall also have received a certificate of the central bureau of criminal identification, records and statistics from the state commissioner of correction in accordance with the provisions of section two hundred and sixty-seven-a of the code of criminal procedure.

Sec. 596. Qualifications of jurors.

In order to be qualified to serve as a juror in the counties included within a city having a population of one million or more, a person must: 1. Be a citizen of the United States, and a resident of the county.

2. Be not less than twenty-one, nor more than seventy years of age.

3. Be the owner, in his or her own right, of real or personal property of the value of two hundred and fifty dollars; or the husband of a woman or wife of a man who is the owner, in his or her own right, of real or personal property of that value.

4. Be in the possession of his natural faculties and not infirm or decrepit.

5. Not have been convicted of a felony or a misdemeanor involving moral turpitude.

6. Be intelligent; of sound mind and good character; well informed; able to read and write the English language understandingly.

A person dwelling or lodging or having or maintaining a dwelling or lodging in a county for the greater part of the time between October first and June Thirtieth next thereafter, is a resident of that county, within the meaning of this section.

Sec. 597. Juror with scruples against death penalty.

No person shall be selected as a grand juror or as a trial juror in a criminal action where the crime charged is or may be punishable by death, who has stated to the county clerk in his examination under oath as required, that he has conscientious scruples against the death penalty and that such scruples would prevent him from returning an indictment, or returning a verdict of guilty, of any crime punishable by death. Such scruple shall not, however, hinder the selection of such person to serve as a trial juror in any civil action or in any criminal action other than that specified above.

Sec. 598. Disqualifications.

Each of the following officers is disqualified to serve as a juror:

1. All elected members of the federal and state executive departments and of the executive department of any political subdivision of the state.

2. The comptroller; the attorney-general; the head of a department or the head and members of a board, council or commission which is the head of a civil department of the federal or state government, or of any political subdivision of the state; members of the state industrial board; members of the state tax commission; members of the state commission of correction; members of the public service and transit commissions; the commissioner of education; the commissioner of agriculture and market; the commissioner of social welfare and the deputy of each officer specified in this subdivision; the secretary to the governor.

3. A member of congress or of the legislature, or a member of the city council of the city of New York.

4. A judge of a court of record, or a surrogate.

5. A sheriff, under sheriff, or deputy sheriff, regularly engaged in the performance of his duties.

6. The clerk or deputy clerk of any court.

No public officer or employee of the United States government, or of any state, city or municipality, or of any

political subdivision of any of them, or of any official board, authority, council, commission, corporation, or other agency of any of them, shall serve on any grand jury. This prohibition shall not apply however, to any public officer serving without compensation, or for compensation of not to exceed one dollar a year, on any local, appeal or advisory board established under the selective service system of the United States pursuant to the provisions of the "Selective Training and Service Act of 1940," or any amendments thereof, nor shall it apply to those who are public officers or employees of the state solely by virtue of their membership in the New York guard pursuant to article two-A of the military law. For the duration of the war and for the period to which the annual grand jury list in effect at its termination shall be applicable this prohibition shall not apply to any public officer or employee mentioned in the first sentence of this paragraph who serves as such public officer or employee without compensation or for compensation not in excess of one hundred dollars per year.

Sec. 599. Exemptions.

Each of the following persons only, any inconsistent provision of law to the contrary notwithstanding, although qualified, is entitled to exemption from service as a juror upon claiming exemption therefrom: 1. A clergyman or minister of religion officiating as such and not following any other calling.

2. A practicing physician, surgeon, or dentist having patients requiring his daily professional attention, a licensed pharmacist actually engaged in his profession as a means of livelihood, a duly licensed embalmer actually engaged in his profession as a means of livelihood, and an optometrist actually engaged in the practice of optometry.

3. An attorney or counsellor at law regularly engaged in the practice of law as a means of livelihood.

4. A person belonging to the army, navy or marine corps of the United States, and the active national guard and naval militia of the state.

5. A member of a fire company or department or police force or department duly organized according to the laws

of the state of any political subdivision thereof and performing his duties therein; or an exempt volunteer fireman, as defined in section two hundred of the general municipal law.

6. A captain, engineer, or other officer, actually employed upon a vessel making regular trips; or a licensed pilot actually following that calling.

7. A woman.

8. An editor, editorial writer, a sub-editor, reporter or copy reader, actively and regularly employed in the handling or gathering of news for a daily, semi-weekly or weekly newspaper.

Sec. 600. Evidence of exemption.

The evidence of the right to exemption as prescribed in section five hundred and ninety-nine is as follows:

An affidavit of the applicant or of another person in his behalf satisfactory to the county clerk stating the facts entitling the applicant to exemption, or in the case of an exempt volunteer fireman, the certificate provided for in section two hundred and two of the general municipal law.

Each affidavit must be filed with the county clerk and must be kept open by him at all reasonable times to public inspection.

The right to exemption must be claimed at the time of examination for liability to serve as a juror, except that a workman may claim such right to exemption at any subsequent time. If a male fails to present such claim at such time, he shall be deemed to have waived the same and cannot be exempted thereafter except for reasons accruing after the time of examination. If, however, he claims exemption at the time of his examination and is not granted the same, he may present such claim for exemption to the court when drawn for jury service or may review such refusal in the manner provided by article seventy-eight of the civil practice act.

Sec. 601. Length of service of jurors and limitation on recurrence thereof.

The length of service of grand or trial jurors in any county included within a city having a population of one million or more shall be determined by rules adopted pursuant to this article.

A person who has served his term as a trial juror in any court within the state, including a federal court, unless he is engaged in the trial of an action or proceeding when his term expires, shall not be qualified to serve again as a trial juror in any court within any county included within a city having a population of one million or more for two years subsequent to the last day of his service.

A person who has served his term as a grand juror in any court, including a federal court, within any county included within a city having a population of one million or more, shall not be qualified to serve again as a grand juror or as a trial juror in any court within such county for one year subsequent to the last day of his service.

Nothing contained in this section shall invalidate a verdict returned by a trial jury or an indictment returned by a grand jury, even though such trial or grand jury includes one or more trial or grand jurors respectively not qualified by virtue of such previous service.

Sec. 602. Officers to attend drawing.

On a day designated by the county clerk, at least one judge of a court of record residing or sitting in the county, to be designated by the justices of the appellate division of the supreme court of the department embracing the respective counties, must supervise the proper drawing of jurors for terms of courts of record where issues are triable by a jury.

Sec. 603. County clerk to notify jurors.

The county clerk must notify each juror drawn for jury service by serving upon him a notice to that effect and specifying the place where and the time when he is required to attend. The notice may be served by mail, personally,

or by leaving it at the juror's residence or place of business with a person of suitable age and discretion.

Sec. 604. Excuses and postponements.

The judge of the trial court may, in his discretion, on the application of a trial juror, excuse him from a part or the whole of the time of service required of him as a juror or may postpone the time of service of a juror to a later day during the same or any subsequent term of the court.

A person who has been notified to attend and who applies to be excused as prescribed in this section must present the notice to the judge in open court. If he cannot personally attend he must send it by a person capable of making the necessary proof in relation to his claim to be excused.

A note of the excuse and of the reason therefor, attested by the judge, who must append his signature or initials thereto, must be made or endorsed upon the notice to attend; or, if the person notified has not brought it into court, upon a separate piece of paper which must be transmitted to the county clerk as part of the report specified by rule.

Sec. 605. Discharge by the court.

The court must discharge a person from serving as a trial juror in the following cases, where the causes justifying the discharge have arisen after examination for liability or where the person has claimed exemption at the time of examination and was refused: 1. Where it satisfactorily appears that he is not qualified;

2. Where it satisfactorily appears that he is disqualified;

3. Where it satisfactorily appears that he is exempt and he claims the benefit of the exemption.

Where a person is discharged for any of the causes specified in this section, the county clerk must destroy the ballot containing his name.

Sec. 606. Penalties.

A person who, in the manner set forth in article one hundred and sixteen of the penal law, shall hinder or obstruct the proper administration, or violate any of the provisions

of this article, of article eighteen-B of the judiciary law, of those sections of the code of criminal procedure regarding grand jurors, or the rules adopted pursuant thereto, shall be subject to the penalties provided in said article of the penal law.

Sec. 607. Trial jurors drawn for court of record to serve in other parts, terms or courts.

Trial jurors drawn for service in any court of record must serve as trial jurors in any other term or part of the same court when it sits in terms or parts, or, by consent of such court, in any other court of record sitting at the same time in the same courthouse. They may also so serve in any court of record sitting in the same county. When so serving in such other term, part or court their service shall be with the same power, force and effect as if they had been drawn as trial jurors for service in such other term, part or court.

Sec. 608. Sheriff's jurors.

The county clerk of each county in a city having a population of one million or more shall select annually from the persons qualified to act as trial jurors, the names of such number of persons as he deems necessary to constitute the sheriff's jurors for that year.

The county clerk shall draw and summon panels of sheriff's jurors, upon request of the sheriff.

APPENDIX C

Rules Relating to the Jury System in the City of New York

Pursuant to the provisions of section 502 of the Judiciary Law, as added by chapter 202 of the Laws of 1940, the justices of the Appellate Division of the Supreme Court in the First and Second Judicial Departments, acting jointly, do hereby adopt the following rules in relation to the jury system in the City of New York.

Part A Rules Relating to Jurors Generally

Rule I

Subpoenaing for Examination

No person shall be selected to serve as a juror unless the county clerk has passed upon his qualifications in accordance with the provisions of article seventeen of the Judiciary Law. For this purpose the county clerk may cause to be served upon any person in the county a subpoena requiring such person to appear before him for the purpose of testifying under oath as to the competency, qualifications and liability of himself or any other person to serve as a juror and to present claims for exemption or disqualification. Such person shall not be entitled to any fee or mileage. Such subpoena may be served personally or by leaving it at the person's residence or place of business with a person of suitable age and discretion, or by mail. If served personally or by substitution the subpoena shall require the person summoned to attend not less than three days after service. If served by mail the subpoena shall require the person summoned to attend not less than five days after the mailing thereof.

One or more successive subpoenas may be served upon the same person where he fails to attend as required by a former subpoena. Where a person has so attended twice and furnished all information required, he shall not be required to attend again for one year thereafter. But the county clerk may, in his discr ion, dispense with the personal attendance of the person so notified where another

person cognizant of the facts is produced and testified in his stead and it appears from the testimony of such other person that the person notified is disqualified, not qualified or exempt.

Rule II

Examination—Questionnaires—Index Cards or Books

Every person appearing for examination as a juror shall be required to fill out, in his own hand, sign and swear to, a written questionnaire. Each questionnaire shall be contained on a card or other paper of a size convenient for handling and shall be in the form prescribed by rule seventeen.

In addition to the questionnaire there shall be made out for each person appearing for examination an index card containing the name of said person, whether he has qualified for jury service or whether he is disqualified, has been rejected, or is otherwise not liable for service, whether he has been chosen for the grand, special or sheriff's jury, and such other information as may be deemed desirable by the county clerk and which may be conveniently inserted on the card. These cards shall be filed alphabetically according to the last name of the person regardless of whether or not he is liable for jury service. They shall be keyed to the questionnaires and shall constitute an index of all persons appearing before the county clerk for qualification as jurors. They shall be kept, if possible, in a visible index file.

A county clerk, instead of using index cards, may keep the required information in properly indexed books. In such event, whenever index cards are referred to in these rules, the reference shall be deemed to include such books.

After the person has filled out the questionnaire he shall be personally interviewed, under oath, by the county clerk.

After the person's examination is concluded and he is found otherwise qualified, his name shall be forwarded to the police department for checking against the records of that department, subject to the provisions of section five hundred ninety-five of the Judiciary Law.

Upon the basis of the questionnaire, the personal interview and the check against the police records, the county clerk shall decide whether the person interviewed is qualified to serve as a juror. In accordance with the decision he shall note on each questionnaire in a prominent place whether the person has been accepted, or found disqualified, not qualified or granted exemption, the reason shall be noted. Where jurors are not qualified, the reason therefor may be indicated by appropriate language or by the symbols R1, R2, R3, R4, R5 and R6 representing the six subdivisions of section five hundred ninety-six of the Judiciary Law. Likewise, exemptions may be indicated by appropriate language or by the symbols E1, E2, E3, E4, E5, E6 and E7 representing the seven subdivisions of section five hundred ninety-nine of the Judiciary Law, and disqualifications may be indicated by appropriate language or by the symbols D1, D2, D3, D4, D5 and D6 representing the six subdivisions of section five hundred and ninety-eight of the Judiciary Law.

There shall be continuous search for persons qualified and liable for jury service, in order to obtain as many prospective jurors as possible and to limit as much as possible repetition of jury service. Before subpoenaing persons for examination, the county clerk shall check their names against the index cards of names of persons previously examined in the county clerk's office.

Rule III

Filing Questionnaires

The questionnaires of persons accepted and the questionnaires of persons rejected shall be filed separately, each in alphabetical order. Whenever any person qualified for jury service becomes exempt or disqualified for reasons accruing since his examination, his questionnaire shall be marked accordingly and transferred to the inactive file. The index card of such person shall also be marked accordingly.

The questionnaires of persons who shall be or shall have become disqualified for jury service because of age or who shall have died shall be kept at least for one year thereafter.

The questionnaires of persons selected to serve as grand, special or sheriff's jurors shall be filed as separate categories, each in alphabetical order. Whenever any person has completed the period for which he has been selected to be a member of the grand, special or sheriff's jury, his questionnaire shall be returned to the file of general trial jurors.

Rule IV

Notification of Acceptance as Juror

After a person has qualified satisfactorily for service as a juror, the county clerk may, in his discretion, issue a notice to such person, informing him that he has been found qualified to serve as a juror and that he will be notified when he has been drawn for actual service. The notice shall also request such person to inform the county clerk if he becomes entitled to exemption and claims such exemption or becomes disqualified at any time after his examination, and shall also request him to inform the county clerk of changes in address or occupation and of any other information which is thought desirable.

Rule V

Preparation of Ballots—General Ballot Box

The county clerk shall prepare a ballot for each person as soon as such person has qualified for jury service. The ballot shall contain the name, occupation, address and number of the juror and such other information as the county clerk deems necessary. The ballots shall be kept in a box, to be known as the general ballot box and shall be retained in the office of the county clerk and shall be kept securely locked and sealed except at the time of authorized drawings when it shall be opened in the presence of the judge supervising the drawing and after the drawing shall be again sealed in the presence of said judge. Such general ballot box is to be constructed cylindrical in form with an aperture large enough only to admit conveniently the hand of the person by whom the ballots are to be drawn.

the aperture to be provided with a cover so arranged as to be conveniently locked and sealed when closed.

At the time of each authorized drawing the ballots made out since the last drawing shall be placed in the general ballot box after the drawing of jurors is completed, or during the course thereof if the box becomes empty, and before the box is again sealed.

All jurors except grand, special and sheriff's jurors shall be drawn from the said general ballot box.

In lieu of the foregoing, the county clerk for Bronx County or for New York County may at his option keep all ballots, except for those persons on a grand, special or sheriff's jury list, in a securely locked, sealed receptacle in the county clerk's office. Such receptacle, may be opened only in order that the ballots may be checked and revised or additional ballots added thereto or, in preparation for an authorized drawing, to transfer ballots therefrom into a wheel constructed as set forth in this rule. Such receptacle may only be opened for such purposes in the presence of and under the supervision of one of the judges designated by the justices of the Appellate Division pursuant to section six hundred and two of the Judiciary Law after due notification to attend pursuant to rule six. If this optional method has been followed, such receptacle or wheel, whichever shall be appropriate, shall be deemed to be referred to in these rules whenever the phrase "general ballot box" is used.

Rule VI

Notice to Judges

At least three days before a drawing the county clerk must notify in writing the judge or judges of courts of record designated by the Justices of the Appellate Division, to attend at his office on a day designated by him, not more than forty nor less than fourteen days before the day appointed for holding a term of court at which issues are triable by a jury, in order to supervise the proper drawing of trial jurors for that term.

A dawing shall be held if one of such judges shall be present on the designated day; otherwise, the county clerk must again notify such judge or judges. Where it is necessary to renotify a judge or judges of a drawing, such notification may be oral and a reasonable period of time shall be given.

Rule VII

Mode of Drawing

The drawing must be conducted as follows:

1. The county clerk must shake the box or turn the wheel containing the ballots so as to mix them thoroughly.

2. He must then, without seeing the name contained on any ballot, publicly draw the ballots out of the box until the requisite number has been drawn.

3. As each ballot is drawn from the general ballot box, it may be checked against the index cards or questionnaires or a list prepared by the county clerk and if it is noted thereof that:

(a) The person whose name appears on the ballot is not liable or qualified for jury service for cause accruing since his examination, or that

(b) the person whose name appears on the ballot has been placed on the grand jury list, the special jury list or the sheriff's jury list the ballot shall be destroyed forthwith or may be set aside and retained in a separate receptacle for not more than two months, such ballots being marked with the reason for such disposition.

4. As each ballot is drawn consideration may, in the county clerk's discretion, be given to the time of year when the juror would prefer to serve.

5. The minute of the drawing must be kept by one of the attending officers who must enter therein the name contained in each ballot drawn, the number assigned, to each ballot drawn, and specify for what court and for what time or part each was drawn. The minute of each drawing shall be signed by the county clerk and the attending offi-

ers, and filed in the county clerk's office, where it shall e open to inspection.

6. Approved ballots drawn from the general ballot box hall be placed in separate receptacles according to the ourts for which they are drawn and shall be kept in such eceptacles until the adjournment of the part or term for hich they are drawn and shall then be disposed of in ccordance with the provisions of rule fifteen as set forth elow.

7. When assigning jurors who have been drawn for ervice in a district of the Municipal Court of the City of ew York in a borough which does not have a central jury art, consideration shall be given to the residence or the lace of business of such jurors in order that they shall ot be unduly inconvenienced.

Rule VIII

Number of Trial Jurors To Be Drawn

The county clerk shall draw for each term and each eparate part of a term of a court of record at which issues f fact are triable by a jury, such number of trial jurors s he believes necessary and sufficient, unless otherwise pecified by general order of the court or by a written rder of the judge appointed to hold the part or term. Where, in pursuance of the provisions of rule seven, it is ecessary to set aside ballots drawn from the general ballot ox, the ballots so set aside shall not be considered as part f the number required to be drawn.

Rule IX

Special Jurors—Ballots and Drawing

The county clerk shall prepare ballots for every name n the special jury list in the same manner as for trial urors and shall deposit them in a receptacle to be known s the special jury ballot box which shall be retained in he office of the county clerk and shall be kept securely ocked and sealed except at the time of authorized drawings.

The drawings of special jurors shall be conducted in he manner prescribed by law for drawing trial jurors.

A minute of such drawing shall be kept, signed and filed in the same manner as for the trial jurors.

This rule shall apply except where inconsistent with statute or rule adopted pursuant to section seven hundred forty-nine-aa of the Judiciary Law.

Rule X

Sheriff's Jurors—Ballots and Drawing

The county clerk shall prepare ballots for every name on the sheriff's jury list in the same manner as for trial jurors, and shall deposit them in a receptacle to be known as the sheriff's jury ballot box which shall be retained in the office of the county clerk and shall be kept securely locked and sealed except at the time of authorized drawings.

The drawings of sheriff's jurors shall be conducted in the manner prescribed for trial jurors.

A minute of such drawings shall be kept, signed and filed in the same manner as for trial jurors.

Rule XI

Length and Time of Service of Trial Jurors

Trial jurors drawn for a term or a part of a term of any court of record in the Counties of New York and the Bronx shall serve only for two weeks or half a term. Trial jurors drawn for a term or a part of a term or terms of any court of record in the Counties of Kings, Queens and Richmond shall serve for a period not exceeding two weeks or half a term, unless a majority of the Justices of the Appellate Division in the Second Department make an order directing otherwise as to the jurors for any court or term of any court. Such jury service shall, however, continue beyond said periods until the conclusion of any trial on which the jurors may be engaged.

Subject to the above, the county clerk in each county may designate the dates when periods of jury service shall commence.

Rule XII

Notification of Jurors

The county clerk must notify each juror named in the minute of trial jurors drawn to attend the term or the part for which he was drawn by serving upon him a notice, addressed to him, stating that he has been drawn as a trial juror for, and is required to attend, the term or the part specified in the notice on the days specified therein. The notice may contain copies of such portions of article seventeen of the Judiciary Law of sections seven hundred and fifty and seven hundred and fifty-one of the Judiciary Law, and of article one hundred and sixteen of the Penal Law, as he deems advisable.

The notice may be served personally or by leaving it at the juror's residence or place of business or employment with a person of suitable age and discretion at least six days before the beginning of the term or the part for which the juror is drawn. Such notice may also be served by mail if mailed at least nine days before the day appointed for such juror to appear, in which case said notice shall be enclosed in a securely closed postpaid wrapper, addressed to such juror at his residence or place of business or employment and properly posted. If the notice is mailed and is returned by the post office undelivered, it may be remailed to the same address or any other address for the juror which the county clerk may have, not less than two days, exclusive of Sundays or holidays before the day appointed for such juror to appear.

Rule XIII

County Clerk to Notify Court Clerk

Before the commencement of the term or part the county clerk must file with the clerk of the court for which jurors are drawn a certified copy of the minute of the drawing, with a return under his hand, indorsed thereupon or annexed thereto, naming each person notified, the time for which he was notified to appear and the time, place and manner of service. Such return shall be presumptive evi-

dence of the fact of such service. An affidavit of the person by whom each service shall have been made, stating the manner, time and place of such service, shall accompany such return.

Rule XIV

Report by Court Clerk after Conclusion of Service of Jurors

The clerk of each court for which trial jurors have been drawn shall, within ten days after the close of each term of service of jurors or after the discharge of the jurors if they are discharged before the close of their term of service, file with the county clerk the certified copy of the minute of the drawing of jurors received from the county clerk before the beginning of the term and the county clerk's return thereto, or a copy of such paper certified by the clerk; together with each notice or other paper attested by a judge in regard to the excusing of jurors. The clerk must also deliver to the county clerk therewith his certificate specifying distinctly and in detail as follows:

1. The name and residence of each juror who attended and served; the number of days the juror attended for the purpose of serving; and the number of days he actually served.

2. The name and residence of each juror who was excused, discharged, exempted or declared disqualified by a judge of the court together with any affidavit, certificate or other document or paper submitted by the juror at the time that he was excused, discharged, exempted or declared disqualified.

3. The name and residence of each person notified who did not attend or serve.

4. The name and residence of any person found guilty of contempt of court and the penatly, if any.

The above papers must be filed in the office of the county clerk and shall not be altered or corrected except in pursuance of an order of the court.

Rule XV

Proceeding Subsequent to Return of Court Clerk's Certificate—Replenishing General Ballot Box

Upon receipt by the county clerk of the certificate of the court clerk, the information therein contained shall be entered on the record of service of each person named. The proper notations shall also be made on the index cards of the persons named. If the person has become disqualified or exempt or a nonresident or has died, the ballot shall be destroyed forthwith or may be set aside and retained in a separate receptacle for not more than two months, such ballots being marked with the reason for such disposition, and the questionnaire transferred to the inactive file. There must be entered on the questionnaire the reason why the ballot was so disposed of.

The other ballots shall be disposed of as follows:

1. Ballots of persons excused shall be kept out of the general ballot box for the period during which excused and shall then be returned to the general ballot box after the necessary clerical notations have been made.

2. Ballots of persons who have been excused to, or whose time of service has been postponed to some future time, shall be kept apart until such future date at which time they shall be deposited in a separate ballot box. When a drawing of jurors is held for such time, jurors shall first be drawn from such box.

3. Ballots of persons who appeared for service and served for at least five days shall be placed in special receptacles dated according to the month and year when they last served in order to assure their not being required to serve again within two years after appearance for their last service and shall be kept out of the general ballot box until that time, when they shall be returned to the general ballot box.

Rule XVI

Additional Jurors

At any time during the sitting of a term of a court i the county, the court may direct an additional number o trial jurors to be drawn for the term or for the part a which the order is made. The order must specify the num ber of jurors to be drawn and the time of drawing. Th drawing shall be held in the office of the county clerk in th manner provided for regular trial jurors, except that notic is not required.

The county clerk must forthwith notify the additiona jurors thus drawn by such a notice as the court directs to attend the term or part at the time specified in the order The county clerk must forthwith file with the clerk of th court for which additional jurors were drawn a return under his hand, naming each person notified as prescribed above and specifying in each case the manner, time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom the service shall have been made, stating the manner, time and place of such service shall accompany such return.

Rule XVII.

Form of Questionnaire

The questionnaire to be filled out by prospective jurors shall contain the following information and shall be in such form as the county clerk may prescribe:

Qualifications to Serve as Juror

State of New York, County of ss.:

Date Result By Whom Examined

(Do not write in this box)

The undersigned, being duly sworn, makes the following answers. (Explanations or remarks concerning answers may be made in ruled box on reverse side):

1. Print name in full .....
First name

.....
Middle name Last name

Married Single Widower
Divorced Separated No. of Children

2. Date of birth (Month day year)
Color Color hair Color eyes
Wear glasses Distinguishing physical characteristics Weight Height

3. Residence Apt. No. Tel. No.

4. Are you the tenant if not, with whom do you live How long living at present address How long in N. Y. State In County

5. Former residences for past six years

6. Give any other name you have used or been known by Did you register at last election
Where did you live then

7. Place of Birth (City State)
If not American born, how became citizen
When naturalized Where

8. Education: Primary, High School, College, Degrees, special studies, etc.

9. Occupation Employed at present
Business Address Tel. No.

10. Firm name of employer How long in present employment

11. What other employment during past six years

12. Wife's name Her occupation
Her firm Her business address

13. Do you or your wife own property (such as bank account, furniture, insurance, trust funds, stocks, bonds, mortgages, land, etc.) worth $250
Describe property

14. Are you employed on a Federal, State or City Public Works Project Are you on relief
Ever served as a juror
In what court and when did you last serve

15. Ever been denied listing as a qualified juror or been stricken from any list of jurors
Where and why

16. Are you physically disabled or incapacitated
Is your hearing or eyesight so impaired that you could not intelligently follow a case in court
Ever confined to a State or Private Institution

17. If your answer to any question on line 16 is "yes," give all particulars

18. Ever arrested or indicted on a criminal charge
Ever convicted
Have you ever had any trouble with the authorities
This includes a violation of a traffic ordinance, or statute or any other ordinance

Any judgment ever been entered against you in a civil court on allegations of fraud or misconduct

19. Any judgments outstanding against you
Nature of actions in which obtained

20. Have you ever been in bankruptcy or made a general assignment for the benefit of creditors
Have you conscientious scruples against the death penalty which would preclude you from finding a defendant guilty if the crime charged be punishable by death

21. Have you such opinions as would prevent a verdict of guilty in a criminal case upon circumstantial evidence

Do you doubt your ability to lay aside opinions or impressions, the result of newspaper reading or hearsay, and render an impartial verdict upon the evidence

22. Are you aware of any prejudice against any State law which would prevent a finding of guilty for violating such law. Have you such a prejudice against any particular defense to a criminal charge as would prevent your finding a fair and impartial verdict upon its merits.

23. By law the failure of a defendant in a criminal case to testify is not considered as any evidence of his guilt. Would you give a defendant the benefit of this law. What months of the year between October 1 and June 30 would you prefer to serve (Name at least two months).

24. Is there anything which would influence you as a juror, as affecting any person, or class of persons because of nationality, sex, color, race, religion, wealth, occupation, political affiliation, social or economic belief or any other reason.

Sworn to before me this — day of ——, 19—.
The foregoing answers are true in all respects.

Sign Here .....

Month Service Preferred. Cap. Pun.
Name Residence Occupation Business Address Date of Birth
1 2 3 4 5 6 7 8 9 10 11 12 Yes No. AJ SJ PJ ShJ

(Reverse side of Questionnaire).

STATE OF NEW YORK,
County of ——, ss:

—— ——, being duly sworn, deposes and says: I do not dwell or lodge in the County of —— for the greater part of the time between the first day of October and the thirtieth day of June next thereafter, and I am not a resident of said County; but I reside permanently at ——, City of —, County of ——, State of ——, and have resided there since ——.

—— ——.

Sworn to before me this —— day of ——
19—.

—— ——.
Deputy County Clerk.

STATE OF NEW YORK,
County of ——, ss:

—— ——, being duly sworn, deposes and says: I am entitled to and claim exemption; I am disqualified; from doing jury service for the following reason

—— ——.

Sworn to before me this —— day of ——
19—.

—— ——.
Deputy County Clerk.

Explanations of any answers on opposite side of this form, or remarks, may be made here.

(ruled box)

RECORD OF JURY SERVICE

Date Placed in Wheel	Term Drawn	Court	Days in Attendance	Days Served: Days Actually Served	Days Served: If excused Reason

CHANGES OF ADDRESS

Business Address
Residence

PART C—RULE OF CONSTRUCTION

Rule XXX

Rule of Construction

Whenever a word of masculine gender is used in these rules, it shall be understood to apply to female as well as male jurors.

APPENDIX D

Mayor's Committee on Unity
of New York City

Municipal Building, Room 705, Brooklyn 2, New York

TRiangle 5-7100, Ext. 290-295

Dr. Dan W. Dodson, Executive Director.
Edith M. Alexander, Bernard Lander, Schuyler N. Warren, Associate Directors.

Committee: Charles E. Hughes, Jr., Chairman; Mrs. Sidney C. Borg, Mendor T. Brunetti, Edmond Borgia Butler, Rt. Rev. Msgr. Raymond J. Campion, Justice Charles S. Colden, Thomas B. Dyett, Dr. William R. R. Granger, Fannie Hurst, Dr. John H. Johnson, Justice Edward Lazansky, Howard McSpedon, Christopher C. Mollenhauer, Michael M. Nisselson, Justice Nathan D. Perlman, Timothy N. Pfeiffer, Ruth S. Shoup, Dr. John A. Singleton, David Sher.

January 23, 1948

Mr. I. Saul Fleischman, 160 Broadway, New York 7, New York.

DEAR MR. FLEISCHMAN:

We are acknowledging your letter of January 20th. We have not made any survey or estimate of the Negro population of the Bronx County, but on the most authoritative official City sources, the most recent estimate of the Negro population of the Bronx is as follows:

Precinct	Population
40	1,361
42	90,000
44	50
48	26,000
41	72,113
43	500

Precinct	Population
45	0
46	200
47	1,770
50	50
52	22

Sincerely yours,

BERNARD LANDER,
Associate Director.

BL:am.

(4513)

MICRO CARD 21
TRADE MARK ®

MATTHEW BENDER & COMPANY
MB
63-1

77

microcard

FILE COPY

Supreme Court, U. S.
FILED
DEC 13 1947
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM 1947

No. 22[redacted]485

GEORGE CORNELIUS MOORE and LESTER HAUGHTON,
Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

BRIEF OF THE PEOPLE OF THE STATE OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK, AND FOR STAY OF EXECUTION OF JUDGMENT

SAMUEL J. FOLEY,
District Attorney of Bronx County,
State of New York,
Attorney for Respondent,

By GEORGE TILZER,
Assistant District Attorney,
851 Grand Concourse,
New York 51, N. Y.

HERMAN J. FLIEDERBLUM,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1947

No. 222 Misc.

GEORGE CORNELIUS MOORE and LESTER HAUGHTON,

Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF OF THE PEOPLE OF THE STATE OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK, AND FOR STAY OF EXECUTION OF JUDGMENT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This is an application by the petitioners, George Cornelius Moore and Lester Haughton, for a *writ of certiorari* to review the decision of the Court of Appeals of the State of New York, rendered on the 21st day of November 1947, unanimously affirming a judgment of the County Court of the County of Bronx, in the State of New York, convicting the petitioners of the crime of Murder in the First Degree.

Facts

On December 18, 1946, Detective James M. Burke, of the Police Force of the City of New York, was assigned, by his superior officer, to do police duty in a licensed package liquor store at premises 1439 Webster Avenue, in the County of Bronx, City and State of New York. He arrived there about 5.15 P. M., and seated himself behind some cases, in the rear of the store, which was used as a storeroom.

At that time, one Richard Shaw, husband of the owner of the store, was the only other person there.

The two petitioners, George Cornelius Moore and Lester Haughton, pursuant to a plan, formed earlier in the day, to commit a robbery there, came into the store about 6 P. M. Moore had a 45-calibre automatic gun with him, which he had obtained from one Otis Banks, that afternoon.

Shaw walked towards them, believing them to be customers. Moore ordered Shaw to get in the back, and drew his gun. As Shaw was walking to the rear of the store, and got close to the boxes in the rear, Detective Burke stepped out from behind the boxes. Moore made a lunge for Burke and they both grappled. Shaw then got behind a counter and "ducked".

Shaw heard six or seven shots fired. After the shooting, he came from behind the counter, at which time the petitioners Moore and Haughton had already left the store. Shaw saw Burke slumped over some boxes, and noticed a wound on top of Burke's head. He notified the police. An ambulance surgeon arrived at about 6.15 P. M. He found Burke slumped over some cases of liquor, in a considerable amount of blood, and pronounced him dead.

After the shooting, the petitioners ran from the store and, by separate routes, returned to Harlem, in the County, City and State of New York, from which place they had started. During the course of their flight, Moore gave the fatal gun to Haughton.

There was ballistic testimony which identified this gun as the fatal gun.

After Moore's return to Harlem, he sent for one Adolph Clark, who knew that Moore and Haughton had gone to the Bronx to commit a robbery. When he arrived at Moore's home, Clark was informed, by Moore, that he had been shot in the arm and that he thought he had killed a man. He asked Clark to see one Joe Brown, in order to borrow some money for peroxide for his arm. Clark noticed two wounds on Moore's left arm. He took Moore's overcoat, jacket and sport shirt with him, at Moore's request. Brown and Clark made the purchase, and returned to Moore's home. Moore repeated what he had previously told Clark, about the shooting.

The following day, Banks went to Moore's home, and Moore told him about the shooting. Banks asked for the return of the gun, which he had given Moore the day before. Moore, at first, said that he had thrown it away, and asked Banks what he wanted with a "hot" gun. When Banks told Moore that the gun did not belong to him, Moore promised to get it back for him.

The testimony shows that Haughton, after getting the fatal gun from Moore, in the course of their flight, subsequently gave it to Adolph Clark, who kept it in his home until Sunday afternoon and then returned it to Otis Banks. The testimony also shows that the gun was fully loaded, when Banks gave it to Moore, and that it had been fully discharged, when Banks got it back.

On January 3rd or 4th, 1947, Banks left the fatal gun with one Frank Askew, as security for a loan of thirty dollars. The gun was recovered by the police, at Askew's home, on February 8, 1947, after both petitioners had been apprehended and had made full confessions.

Moore's clothes, which Clark had taken away with him, from Moore's home, on the night of the shooting, were subsequently burned by Adolph Clark and one Harold Dupree. To Dupree, Moore also stated that he had been shot in a hold-up in the Bronx, and that he had shot a policeman.

On February 7, 1947, Moore made a confession, in which he stated, in substance, that he and another man, whose name he said he did not know, were involved in the shooting and that this other man used the fatal gun.

Later that night, he changed his story, and identified the other man with him as the petitioner Haughton. He also admitted, in that later confession, that he, Moore, fired the fatal shots.

Between the first and second confessions, made by Moore, he was seated next to Shaw, in the office of Chief Assistant District Attorney Ryan, to whom the confessions were made. Before making the second confession, Moore addressed himself to Shaw, and told him that it was lucky for him, Shaw, that he did not use Shaw as a shield, when Burke began shooting, or he, Shaw, would probably have been killed also.

Haughton was apprehended on February 8, 1947, and, at first, denied any participation in the attempted robbery and in the killing of Detective Burke.

Shortly thereafter, he was confronted by his co-defendant Moore who said to him:

> "I have told everything. They got everything. Our friends spoke on us. * * * Everything is up. You might as well tell him what happened * * * " (fols. 1279-1280, Record on Appeal).

Whereupon, the petitioner Haughton admitted his connection with the crime, and also made a full confession.

The confessions made by Moore and Haughton were stenographically recorded, and were immediately transcribed. Each of the petitioners read his confession, and made corrections in their respective statements, which they were told they could do, if they so desired. Each of the petitioners then signed his name, at the bottom of his confession.

As to the petitioner Haughton, Clark testified that he and Haughton were in the Bronx about a week before the

shooting, and passed the liquor store in question; and that Haughton said to him that it looked like an easy store to stick up. When Haughton took the stand, on his own behalf, he admitted that he and Clark had passed this store a week before, as testified to by Clark, but claimed that it was Clark's suggestion that the store was an easy store to stick up.

The petitioner Moore, at the time of the trial, was 34 years old, and the petitioner Haughton 24 years old.

Each of the petitioners, when testifying in his own behalf, admitted that he had previously been convicted of crimes.

Opinions of the State Courts

The petitioners Moore and Haughton were convicted of the crime of Murder in the First Degree, after a trial by a jury, in the County Court held in the County of Bronx, State of New York. No opinion was rendered by the Trial Court.

The judgment of conviction of the crime of Murder in the First Degree, as to each of the petitioners, was unanimously affirmed by the Court of Appeals of the State of New York, without opinion.

Preliminary Statement

On February 11, 1947, the Grand Jury of Bronx County, State of New York, filed an indictment against the petitioners, Moore and Haughton, for the crime of Murder in the First Degree.

Thereafter, Counsel was duly assigned, to each of the petitioners.

On February 19, 1947, each of the petitioners pleaded not guilty to the said indictment.

Thereafter, a motion was made, by the People, in the County Court, Bronx County, for a special jury, pursuant to the provisions of section 749-aa of the Judiciary Law of the State of New York, to try the issues.

This motion was opposed by Counsel for each of the petitioners.

The motion was granted on February 26, 1947, and it was ordered that a panel of 150 special jurors be drawn on the 3rd day of March, 1947.

Such drawing was held and was supervised, as required by law, by a Justice of the Supreme Court of the State of New York.

Each of the petitioners was represented by Counsel at such drawing, and raised no objection, whatsoever, to the method of drawing.

On March 20, 1947, when the case was called for trial, each of the petitioners served a challenge to the panel of jurors, upon the following grounds:

1. That section 749-aa of the Judiciary Law of the State of New York is in violation of section I of the Fourteenth Amendment of the Constitution of the United States.

2. That qualified negro jurors were improperly excluded from the list of special jurors, from which said jury panel was drawn.

3. That qualified women jurors were improperly excluded from the list of special jurors, from which said jury panel was drawn.

The challenge came on to be heard, and the minutes of this hearing can be found at pages 36 to 48 inclusive of the record on appeal.

For the convenience of this Court, the minutes on this hearing are set forth in the appendix herein.

At the conclusion of the hearing, the challenge was disallowed, to which ruling the petitioners duly excepted.

Upon the appeal to the Court of Appeals, the petitioners did not, and they do not now, upon this application for a *writ of certiorari*, urge their third ground of challenge (alleged improper exclusion of women jurors).

After the challenge was disallowed, a jury was duly selected, and the petitioners tried on the indictment aforesaid. The jury returned a verdict of guilty of the crime of Murder in the First Degree, as to each petitioner.

The Court of Appeals of the State of New York, in unanimously affirming the judgment of conviction as to each petitioner, fixed the week beginning Monday, January 5, 1948, as the week during which the original sentence of death shall be executed upon the petitioners herein.

The Questions Presented

1. Whether the trial and conviction of the petitioners, by a special jury, pursuant to section 749-aa of the Judiciary Law of the State of New York, denied to petitioners their rights under the Fourteenth Amendment of the Constitution of the United States.

2. Whether there was a systematic, intentional and deliberate exclusion of negroes from the panel of jurors from which a trial jury was selected in the instant case.

Statute Involved

The relevant statute is set forth in the appendix herein.

POINT I

The trial and conviction of the petitioners for the commission of the crime of murder in the first degree, by a special jury, pursuant to section 749-aa of the Judiciary Law of the State of New York, did not deny to the petitioners their rights under the Fourteenth Amendment of the Constitution of the United States.

The petitioners contend that section 749-aa of the Judiciary Law of the State of New York is unconstitutional, in that it violates the Fourteenth Amendment of the Constitution of the United States.

The Court of Appeals of the State of New York, in the case of *People* v. *Dunn* (157 N. Y. 528), *People* v. *Hall* (169 N. Y. 184), *People* v. *Meyer* (162 N. Y. 257), and *People* v. *Conklin* (175 N. Y. 333), has held that the act of the Legislature in providing for special juries in criminal actions, in certain cases, is a valid and constitutional exercise of the Legislative power.

This Court, in the recent case of *Fay* v. *New York*, decided June 23, 1947 (U. S. Supreme Court, Law-ed. Advance Opinions 1946-1947, Vol. 91—No. 17), rehearing denied October 13, 1947, had the question of the constitutionality of section 749-aa of the Judiciary Law of the State of New York before it.

This Court held the statute (sec. 749-aa of the Judiciary Law of the State of New York) to be constitutional.

In the prevailing opinion, Mr. Justice JACKSON, at page 1523 said:

> "We fail to perceive on its face any constitutional offense in the statutory standards prescribed for the special panel. The Act does not exclude, or authorize the clerk to exclude, any person or class because of race, creed, color or occupation. It imposes no qualification of an economic nature beyond that imposed by the concededly valid general panel statute. Each of

the grounds of elimination is reasonably and closely related to the juror's suitability for the kind of service the special panel requires or to his fitness to judge the kind of cases for which it is most frequently utilized. Not all of the grounds of elimination would appear relevant to the issues of the present case. But we know of no right of defendants to have a specially constituted panel which would include all persons who might be fitted to hear their particular and unique case. This panel is for service in a wide variety of cases and its eliminations must be judged in that light. We cannot overlook that one of the features which has tended to discredit jury trials is interminable examination and rejection of prospective jurors. In a metropolis with notoriously congested court calendars we cannot find it constitutionally forbidden to set up administrative procedures in advance of trial to eliminate from the panel those who, in a large proportion of cases, would be rejected by the court after its time had been taken in examination to ascertain the disqualifications. Many of the standards of elimination which the clerk is directed to apply in choice of the panel are those the court would have to apply to excuse a juror on challenge for cause."

The petitioners, as contended in *Fay* v. *New York, supra,* contend that special juries are convicting juries, and refer to the fourth annual report of the Judicial Council of the State of New York (pp. 46-48) in support of that contention. Counsel for the petitioners further point to the result of their investigation of the records of convictions, in the County Court of Bronx County, to substantiate that claim. They assert that from July 1, 1937 to June 30, 1946, there were 79% of convictions by special juries, as compared with 57% of convictions by ordinary juries; that of the 19 cases tried by special juries, during that period there were 15 convictions and 4 acquittals.

Accepting the figures submitted by the petitioners, the respondent begs leave to point out that all of the cases in which special juries were used in Bronx County, from July 1, 1937 to June 30, 1946, were capital cases, with the exception of two. One of those two cases involved a manslaugh-

ter, arising out of an abortion; and the other, an involved case of criminally receiving stolen property, which took about three weeks to try.

In five of the above capital cases, in which verdicts of guilty were returned, the jury convicted of a lesser degree than that charged in the indictment.

So that, in nine of the nineteen cases tried, by special juries in Bronx County, the defendants were either acquitted or found guilty of lesser degrees of crime than that charged.

Surely, such a record does not support the contention of the petitioners that special juries are convicting juries.

The petitioners rely, heavily, on the annual reports of the Judicial Council of the State of New York in support of their contention.

Mr. Justice JACKSON, in his opinion, in *Fay* v. *New York*, *supra*, at page 1528, with reference to the reports of the Judicial Council, said as follows:

> "While the Judicial Council has pointed out and investigated the different conviction ratios, it has at no time suggested that the special jury has been inclined to convict except where conviction was warranted. New York extends an appeal on law and fact as matter of right. If there were a tendency to convict improperly, the Judicial Council, which includes the Chief Judge of the Court of Appeals and the Presiding Justice of the Appellate Division, which courts review these cases, would know it. Despite the Council's desire to abolish this jury, no such reasons were ever assigned. No statistics are produced to show that special juries have been more often reversed on the facts than ordinary ones. Of course, it would be impossible for us to say even were we to examine the cases in detail whether the difference in percentage of convictions indicated a too great readiness to convict on the part of special juries or a too great readiness to acquit on the part of ordinary juries, or whether the disparity reflected a difference between the ordinary case and those selected for special jury trial, rather than a reflection of an attitude on the part of either panel. It may result from the greater attention and better counsel which the prosecution gives to these important cases."

The respondent respectfully submits that statistics have little value in determining what the attitude of jurors has been in the past.

Ever so many factors determine whether a juror in a given case will return a verdict of guilty. Some of those factors are:

1. Sympathy plays a great part in the trial of a criminal case. Experience has shown that where the crime is of a serious nature, or is affected with a great public interest, sympathy is less likely to play a part in the jury's consideration of the case. It is that type of case which is generally tried by a special jury.

2. Important cases, such as are tried by special juries, receive greater attention from the police in their search for evidence, and more thorough preparation on the part of the prosecution.

It is common knowledge that only the ablest and most experienced prosecutors are assigned to the trial of important cases.

3. In the type of cases tried by special juries, material witnesses are taken into custody and committed, so as to be available at the trial.

This practice results in material evidence being available, and lessens the opportunity, of those interested in bringing about an acquittal of the defendant, to tamper with such witnesses.

In the trial of ordinary cases, by ordinary juries, this practice is rarely resorted to, because it would involve the commitment of a multitude of witnesses.

Since only such cases as involve crimes of a serious or involved nature, or are affected with a public interest have been tried by special juries in Bronx County, while ordinary, "run-of-the-mill' cases have been tried by ordinary juries, the difference in the percentage of convictions cannot be attributed to a "too great readiness to convict on

the part of special juries or to a too great readiness to acquit on the part of ordinary juries."

The disparity in the percentage of convictions, it is respectfully submitted, reflects a difference between the ordinary case and the important case selected for special jury trial.

Each case, it is submitted stands upon its own facts.

Notwithstanding the greater attention and more thorough preparation given to the trial of important cases, special juries acquit, or convict of a lesser degree of crime, where the evidence warrants it.

Thus, in Bronx County, from July 1, 1937 to June 30, 1946, special juries acquitted in four out of nineteen cases tried, and in five cases convicted of a lesser degree than that charged in the indictment.

It is respectfully submitted that the foregoing statistics do not support the contention of the petitioners that special juries are convicting juries.

POINT II

There was no systematic, intentional and deliberate exclusion of negroes from the panel of jurors from which the jury was selected in the instant case.

> "It is fundamental in questioning the composition of a jury that a mere showing that a class was not represented in a particular jury is not enough; there must be a clear showing that its absence was caused by discrimination, and in nearly all cases it has been shown to have persisted over many years. Virginia v. Rives, 100 U. S. 313, 322, 323, 25 L. ed. 667, 670, 671; Martin v. Texas, 200 U. S. 316, 320, 321, 50 L. ed. 497, 498, 499, 26 S. Ct. 338; Thomas v. Texas, 212 U. S. 278, 282, 53 L. ed. 512, 513, 29 S. Ct. 393; Smith v. Texas, 311 U. S. 128, 85 L. ed. 84, 61 S. Ct. 164; Hill v. Texas, 316 U. S. 400, 86 L. ed. 1559, 62 S. Ct. 1159; Akins v. Texas, 325 U. S. 398, 89 L. ed. 1692, 65 S. Ct. 1276, supra. Also, when discrimination of an unconstitu-

tional kind is alleged, the burden of proving it purposeful and intentional is on the defendant. Tarrance v. Florida, 188 U. S. 519, 47 L. ed. 572, 23 S. Ct. 402; Martin v. Texas, 200 U. S. 316, 50 L. ed. 497, 26 S. Ct. 338; Norris v. Alabama, 294 U. S. 587, 79 L. ed. 1074, 55 S. Ct. 579; Snowden v. Hughes, 321 U. S. 1, 8, 9, 88 L. ed. 497, 502, 503, 64 S. Ct. 397; Akins v. Texas, 325 U. S. 398, 400, 89 L. ed. 1692, 1694, 65 S. Ct. 1276."

Fay v. *New York, supra*, 1530.

The evidence introduced by the petitioners to establish their ground of challenge that negroes were systematically, intentionally, and deliberately excluded from the panel of jurors, wholly fails to substantiate that claim.

The petitioners, upon the trial of the challenge, called one William F. Fischer, employed in the County Clerk's Office, Bronx, Division of Jurors Office, who supervised the compiling of the list of special jurors.

He testified that under the law he was required to prepare a list of 800 special jurors; that such list was made up from the list of regular jurors; that he could not tell, from the records, how many on the special jury list were negroes or whites, since no record was made as to color, race or creed, in the selection of special or regular jurors (fols. 123-142, Record on Appeal).

He testified that, because of that fact, he was unable to state how many negroes were on the special jury list, but said that he was certain that there were some.

Thus, his testimony on that point was as follows:

"Q. Mr. Fischer, of your own knowledge, you cannot then definitely state whether or not there are any Negro jurors on the special panel? A. Well, we know there are.

Q. When you say you know there are, do you know that from your records? A. Yes, sir; from examining them personally.

Q. How many would you say there are on the special list? A. I couldn't even give you an estimate, because there are so many of them that come in. I couldn't tell you truthfully.

Q. You mean there are so many people that come into your office? A. No; colored people that we examine.

Q. And how many have you accepted? A. We couldn't tell you that. There is no way of telling.

Q. One, two, five, ten; can you give us an approximate idea? A. I couldn't tell you maybe two dozen; maybe three dozen.

Q. Maybe only five? A. Oh, no; that would be too small an amount. I should say from 1946 on I must have examined at least 500 myself.

Q. And how many of those 500 did you accept? A. That is, for regular jury work.

Q. I am concerned now, Mr. Fischer, with just the special list. A. Oh, I would say I examined maybe about a hundred, and of those maybe, well not to pin me down, maybe a dozen" (fols. 131-133).

And at folios 139-140 he testified as follows:

"Q. Mr. Fischer, you know, do you not, that certain sections of the county are commonly known as colored sections where the colored population is thick and heavy? A. That's right.

Q. Does your office concentrate when looking for jurors on those sections, or does your office shy away from those sections? A. No. Only a short time ago—I guess about eight months ago—it so happened that in one of the election assembly districts which embodied quite a number of colored people, I would say that there were 400 that responded to notices that we sent out."

Fischer also testified that he was not aware of any deliberate intent to exclude negroes from service on special juries; that the drawing of the special jury panel for the instant case was supervised by a Justice of the Supreme Court; that the petitioners were represented by counsel at the drawing, and that no objection was raised to the method of drawing (136-137).

The foregoing testimony of Fischer utterly fails to establish any systematic, purposeful and deliberate exclusion of negroes from the special jury list.

The uncontradicted testimony is that no person was excluded because of race, creed or color.

The petitioners urge, "That out of 500 Negro jurors examined for jury duty approximately 12 were selected as special jurors on a special jury panel of 783 or 784."

The petitioners are in error in stating that 12 special jurors were selected out of 500 negroes examined.

The evidence on this point, though not very clear, seems to indicate that 500 jurors were examined; that 100 were examined for special jury service, and that of that number about 12 Negroes were selected (133).

The record is barren of any proof showing the population of Bronx County and what proportion of such population is colored.

Neither is there any evidence in the record to show the degree of literacy and intelligence of the Negro portion of the population, and whether or not the disparity between the number of white special jurors and Negro special jurors is attributable to an inability on the part of Negroes to qualify as special jurors.

> "Even in the Negro cases this Court has never undertaken to say that a want of proportionate representation of groups, which is not proved to be deliberate and intentional, is sufficient to violate the Constitution. Akins v. State of Texas, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276 * * *."

Fay v. *New York, supra*, at pages 1533-1534.

In the recent case of *Eddie* (*Buster*) *Patton, petr.* v. *State of Mississippi* (Cal. No. 122), (official citation unavailable), decided by this Court on December 8, 1947, this Court reiterated the doctrine that it is only where there is a systematic, intentional and deliberate exclusion of negroes from jury duty that there can be said to be a denial of constitutional rights.

The record in the instant case not only shows that the petitioners failed to establish their claim that there was a systematic, intentional and deliberate exclusion of negroes

from the special jury panel, but it affirmatively appears from the record that negroes, from time to time, were examined as to their qualifications for special jury service; and that a number of negroes were, in fact, selected for such service, and their names appeared on the special jury list, and were in the drum from which the jurors' names were selected. The mere fact that there were no negroes on the panel of 150 jurors drawn in the instant case is no proof that there was discrimination against negroes.

The evidence adduced upon the trial of the challenge establishes, beyond any doubt, that in the preparation of the lists of jurors, special as well as general, no distinction whatsoever was made as to race, creed or color.

Not only have the petitioners not sustained the burden of establishing their claim that there was purposeful and intentional discrimination against Negroes, but they have not offered an iota of proof to substantiate their contention.

The petitioners do not point to any evidence in the record which would justify the claim that negroes were, at any time, in the history of this State systematically, intentionally and deliberately excluded from juries.

In nearly all cases where this Court has found such discrimination, it has found it to have persisted over many years.

It has never been shown to have existed in the State of New York.

In the instant case, the testimony adduced on the hearing of the challenge does not show any discrimination of any kind.

As was said by Mr. Justice JACKSON in his opinion in *Fay* v. *New York*, *supra*, at page 1535:

> "* * * * The defendants have shown no intentional and purposeful exclusion of any class, and they have shown none that was prejudicial to them. They have had a fair trial, and no reason appears why they should escape its results."

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari to the Court of Appeals of the State of New York, and for stay of execution of judgment, should be denied.

Dated: New York, December 12, 1947.

Respectfully submitted,

SAMUEL J. FOLEY,
District Attorney of Bronx County,
State of New York,
Attorney for Respondent,

By GEORGE TILZER,
Assistant District Attorney,
851 Grand Concourse,
New York 51, N. Y.

HERMAN J. FLIEDERBLUM,
of Counsel.

APPENDIX

Section 749-aa of the Judiciary Law of the State of New York

§ 749-aa. Special jurors in certain counties.

1. List of special jurors. The county clerk of each county of the state having a population of one million or more, and of each county of the state having a population of four hundred thousand or more, adjoining a county having a population of one million or more inhabitants, according to the last preceding federal census, shall select from the persons qualified to serve as trial jurors in such county such number of special jurors as the justices of the appellate division of the supreme court, or a majority of them of the department in which such county is situated shall, from time to time, direct. The names of the persons so selected liable to serve as special jurors shall be entered in suitable books alphabetically arranged, with their places of business and the residence of each. Such county clerk, from time to time, may cancel such selection and strike the names of such special jurors from such list and select other special jurors in their places. Persons who are selected as aforesaid by such clerk to act as special jurors shall be exempt from all other jury duty from and after the date of their selection, and they shall remain so exempt so long as they continue to be such special jurors.

2. Persons ineligible. No person shall be selected as such special juror who is by law disqualified or who claims and is allowed exemption from service as a trial juror, or who has been convicted of a criminal offense, or found guilty of fraud or other misconduct by the judgment of any civil court or who possesses such conscientious opinions with regard to the death penalty as would preclude his finding a defendant guilty if the crime charged

be punishable with death, or who doubts his ability to lay aside an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression, or whose opinion as to circumstantial evidence is such as would prevent his finding a verdict of guilty upon such evidence, or who avows such a prejudice against any law of the state as would preclude his finding a defendant guilty of a violation of such law, or who avows such a prejudice against any particular defense to a criminal charge as would prevent his giving a fair and impartial trial upon the merits of such defense, or who avows that he cannot in all cases give to a defendant who fails to testify as a witness in his own behalf the full benefit of the statutory provision that such defendant's neglect or refusal to testify as a witness in his own behalf shall not create any presumption against him.

3. Examination as to fitness; subpoena; punishment for disobedience. No person shall be selected as a special juror until he shall have been examined personally by the county clerk, his deputy or secretary as to his qualification and fitness to serve as a special juror. Such county clerk may issue a subpoena requiring any person within such county to attend before him, his deputy or secretary at a time specified for the purpose of testifying concerning the qualification or fitness of himself or any other person to serve as a special juror, and the propriety of the selection of such special juror. A person so subpoenaed must attend and testify accordingly. In case of his failure to attend and testify as required by such subpoena, or a refusal to be sworn, or to answer any legal or pertinent question, he shall be punished therefor by any justice of the supreme court as a contempt of court. All of the provisions of sections four hundred four through four hundred fourteen of the civil practice act, sections twenty-five and twenty-six of the civil rights law, are made applicable to the enforcement of the provisions of this sub-

tion, except that no fees are required to be paid to any rson so subpoenaed. The county clerk, in the record de by him of the jurors selected as such special jurors, all enter the age of each special juror so selected, his busi- ss or vocation, if any, the length of his residence in the te and county and, if naturalized, the date of his turalization. Such record shall be a public record and ll be open to inspection.

. Application for special jury. Whenever an issue of t has arisen in any civil or criminal action triable in a nty embraced within the provisions of this section, district attorney, or the defendant, if in a criminal ion, or either party in a civil action may apply for a cial jury to try such issue. Such application may be de at any term of the supreme court appointed to be d within the county where such issue is triable, or at term of any other court of record in which court such ue is to be tried. It must be made upon the indictment, plea thereto and an affidavit in a criminal action or the adings and affidavit in a civil action upon two days' tice to the adverse party or his attorney. Where, upon h application, it appears to the court that by reason the importance or intricacy of the case, a special jury is uired, or that the subject-matter of the indictment or issue to be tried has been so widely commented upon t the court is satisfied that an ordinary jury cannot thout delay and difficulty be obtained to try such issue, that for any other reason the due, efficient and im- rtial administration of justice in the particular case uld be advanced by the trial of such an issue by a cial jury, the court to which the motion is made may ke an order directing that such trial be had by a special y, and such trial shall be had accordingly. The order st specify the time when the drawing of such special y shall take place and the number of special jurors to then drawn, the term of the court and particular day

in the term when such special jury must attend. The day so specified for the attendance of the special jury must, except in the case of an order for additional special jurors drawn under subsection six of this section, be at least five days in addition to any Sunday, holiday or half-holiday, after the day specified for the drawing of the special jury.

5. Drawing; notification of jurors. At the time specified in the order the special jury shall be drawn at the office of the county clerk by such county clerk, or his deputy, and a judge or justice of a court of record residing in the department in which such special jury is to be drawn. A minute of the drawing must be kept by the county clerk, or his deputy, which must be entitled in the action in which the jury is to serve specifying the term of court and the particular day in the term when the special jurors so drawn must attend; and there must be entered thereon the name of each juror drawn. Such minute must be signed by the judge or justice and by the county clerk, or his deputy, present at the drawing and such minute so signed must be filed in the office of such county clerk. Such county clerk must notify each juror therein named as provided for by section six hundred twenty four of the judiciary law; except that such notice need not be served six days before the time that the special juror is required to attend. Before the day specified for the attendance of the special jurors the county clerk must file with the clerk of the trial court, part or term at which the juror is required to attend, a certified copy of the minute with a return indorsed thereon or annexed thereto specifying the manner in which each juror was notified and the time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom such service shall have been made, stating the manner, time and place of such service shall accompany such return.

6. Additional jurors; drawing. If the panel of the special jurors thus drawn shall be exhausted before a jury is completed, or if the trial court shall be of the opinion that additional special jurors will probably be needed to complete the jury, the trial court may, from time to time, direct that such additional special jurors be drawn for the trial as it may deem expedient. The order must specify the number to be drawn, the time of the drawing and the time when such additional jurors shall be required and notified to attend. Such additional drawing shall be made by the same officers authorized to draw the special jurors, either in open court in the presence of the judge or justice presiding at the trial, or at the office of the county clerk as prescribed in such order, and shall be conducted in the same manner as the original drawing and a minute thereof kept and certified as prescribed for the original drawing, and the jurors so drawn shall be summoned in the same manner as those originally drawn.

7. Challenges; trial. The parties to such an action shall have the same number of peremptory challenges and the same challenges for cause to be tried in the same manner as upon a trial with an ordinary jury. The rulings of the trial court, however, in admitting or excluding evidence upon the trial of any challenged for actual bias, shall not be the subject of exception. Such rulings and the allowance or disallowance of the challenge shall be final. Upon the formation of a special jury as hereinbefore provided the issue must be tried by such jury as prescribed by the code of criminal procedure or the civil practice act with respect to a jury trial in a criminal or civil action with an ordinary jury.

8. Revision of list. In each county of the state to which this section applies, the names selected and composing the special jury list heretofore compiled, shall be the special jury list for such county subject to such revision thereof

by striking therefrom and adding thereto the names
such jurors as from time to time the county clerk sh
deem proper.

9. Appellate division to make rules. The justices
the appellate division of the supreme court of the depa
ment embracing the county in which such special jury li
shall be constituted shall make such rules and regulatio
not inconsistent with the provisions of this section as sh
be necessary to regulate the making of the application f
a special jury under the provisions of this section for t
drawing and attendance of such jurors and for the prop
and efficient enforcement of the provisions of this sectio

10. Violations of section or rules, penalty. Any viol
tion of this section, or of such rules and regulations pr
scribed by the appellate division of the supreme court sh
be deemed a contempt of court under section seven hu
dred fifty of the judiciary law and such rules and regul
tions may be enforced as if a violation thereof were su
a contempt as provided by section seven hundred fifty-o
of the judiciary law.

106

Testimony on Hearing of Challenge

COUNTY COURT,

BRONX COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK
against
GEORGE C. MOORE and LESTER HAUGHTON,
Defendants.

Ind. #178/1947.

107

(On indictment for Murder—1st Degree.)

New York, March 20, 1947.

Before: HON. JAMES M. BARRETT, County Judge and a Jury.

APPEARANCES:

For the People:

SAMUEL J. FOLEY, Esq., District Attorney, Bronx County, and NICHOLAS F. DELAGI, Esq., Assistant District Attorney.

For Defendant Moore: 108

JOHN F. WILKINSON, Esq., and ISIDORE EHRMAN, Esq.

For Defendant Haughton:

I. SAUL FLEISCHMAN, Esq., and HENRY F. MCDONOUGH, Esq.

109 The Court: There has just been submitted to me within the past 10 or 15 minutes a challenge on behalf of the defendant George Cornelius Moore and the defendant Lester Haughton as to the sufficiency of the panel that has been called to try this case. That is under Section 363 of the Code of Criminal Procedure. (A copy of this challenge was not served on the District Attorney until
110 after the Court received the challenge this morning.)

Now, does the District Attorney challenge the sufficiency of the facts alleged as a ground for challenge? Do you deny the sufficiency of the challenge?

Mr. Foley: Yes, sir, we do.

The Court: Under the circumstances, then, we will have to proceed to try the issue today, and it would be advisable to excuse the jurors until tomorrow morning, because it will probably take a good part of the day to get ready. Now, I think for their convenience we will adjourn until tomorrow morning. Is there any objection?

111 Mr. Wilkinson: There is no objection by the defendant Moore.

Mr. Fleischman: No objection by the defendant Haughton.

Your Honor, we want to note our exception on the record to the denial by the District Attorney.

Mr. Wilkinson: And exception on the record for the defendant Moore.

The Court: We will proceed to try the issue. All
112 jurors are excused until tomorrow morning at ten minutes to ten.

All right, gentlemen, it is up to you to proceed.

Mr. Wilkinson: In that event, sir, we would like to have the Court's permission to direct that the County Clerk be forthwith ordered to appear before the Court together with the files.

The Court: I don't know whether he is available.

Mr. Wilkinson: Well, a deputy, sir, will do, together
113 with their records that they have amassed under Section 749aa, Article 18th of the Judiciary Law.

The Court: That will take some time, now. I will take a recess at this time in order that we might get these various men. Whom else do you want to call?

Mr. Wilkinson: We want to call the County Clerk or the deputy in charge of the panels, together with the records.

The Court: Do you want the County Clerk in person?

Mr. Wilkinson: Or a deputy who would have charge of the panels, together with their records.

The Court: Whom else?

Mr. Wilkinson: That will be sufficient. 114

The Court: Just the County Clerk deputy and his records?

Mr. Wilkinson: Yes, sir.

The Court: The Court will do that.

Mr. Fleischman: If your Honor pleases, we would like those challenges marked for identification for the record.

The Court: They are filed with the Court.

Mr. Fleischman: And are they made part of the record of this proceeding? 115

The Court: They will be filed with the record in this case.

So there will be no mistake about it, I had three separate papers submitted on behalf of Lester Haughton and one paper on behalf of George Cornelius Moore.

It is understood, gentlemen, the allegations in the three papers are the same as the allegation in the one paper.

Mr. Wilkinson: I understand so; yes, sir.

The Court: They have asked for the production of the County Clerk or a deputy and his records, so we will take 116 a recess until we get those men here.

Mr. Foley: Shall I undertake to have them here?

The Court: Yes.

(After Short Recess.)

The Court: Are you ready, gentlemen?

Mr. Wilkinson: Defendant Moore is ready.

Mr. Fleischman: Defendant Haughton is ready.

The Court: You made certain requests of me before. Have you had ample opportunity to look at the records you have asked to be produced?

Mr. Wilkinson: Yes, sir.

The Court: Are both sides ready to proceed?

117 Mr. Wilkinson: Yes, sir.

The Court: I understand the inquiry now is to be directed to the intentional elimination or disqualification of women and Negroes on the special jury panel.

Mr. Wilkinson: That is correct.

118 The Court: All right; proceed.

Mr. Fleischman: Intentional or improper elimination.

The Court: Swear the County Clerk.

Michael B. McHugh, County Clerk, Bronx County, being first duly sworn, testified as follows:

By Mr. Wilkinson.

119 Q. Now, Judge McHugh, in your capacity as County Clerk of the County of Bronx, do you in your office have charge of the compiling of a list of special jurors? A. We do.

Q. You compile that list pursuant to the Judiciary Law of the State of New York? A. We do.

Q. And more specifically Section 749aa of that law, is that correct? A. Yes, sir.

Q. The list of special jurors that is compiled in your office, is that taken from a general list of jurors for this county? A. Yes.

Q. These lists, are they compiled by subordinates of yours
120 in the County Clerk's office? A. All work in the County Clerk's office is done by subordinates.

Q. So that the records and everything are compiled by others under your supervision? A. Yes, sir.

Q. They are not personally compiled by you? A. No, ir.

Mr. Wilkinson: No further questions.
Mr. Fleischman: That's all. 121
Mr. Foley: Judge, I would like to ask a question, please.

By Mr. Foley.

Q. Who is it in your office that is designated by you to ompile this list of special jurors? A. The jurors office in charge of a deputy, John J. Hanley, and under him the secretary of the office, William Fischer.
Q. And is he the subordinate who actually does the ork? A. Fischer is in charge of the actual clerical end 122 f the work under the direction of Mr. Hanley.

Mr. Foley: Thank you.
(Witness excused.)

William F. Fischer, 888 Faile Street, Bronx, New York, eing first duly sworn, testified as follows:

By Mr. Wilkinson.

Q. Mr. Fischer, where are you employed? A. Division 123 f Jurors office, County Clerk, Bronx.
Q. In that capacity do you have charge of compiling he list of special jurors? A. I supervise it; yes, sir.
Q. Will you tell us how the list of special jurors is com-iled? A. Well, under the law it is required that we have list of 800 special jurors, and we select or make up that st from jurors that are on our present list. When they me in for examination and so forth, we make up our list om that. Then when there are vacancies we send for 124

the regular jurors on the list and we examine them. If they meet with the requirements we place them on the list.

Q. What are the requirements according to your office of a special juror? A. That they not be opposed to capital punishment.

Q. Is that the only requirement? A. That's the only one. There are some other questions on the questionnaire, and with the approval of the applicant we place them on the special juror list.

125 Q. For the special jurors is there a separate application that is signed by them, or is it the same application for a trial juror? A. It is a separate application.

Q. Do you have a copy of that? A. I have. This is it (handing same to counsel).

Mr. Wilkinson: I will offer that copy in evidence.

Mr. Foley: No objection.

(Same received in evidence and marked Defendants' Exhibit 1 of this date.)

126 Q. Now, with reference to the trial jurors in Bronx County, is there a different application that is used for those jurors? A. There is, sir.

Q. Do you have one with you? A. I have. There is one form for men and one form for women (handing same to counsel).

Mr. Wilkinson: I will offer these forms in evidence separately.

Mr. Foley: No objection.

(Same received and marked Defendants' Exhibits 2 and 3 respectively of this date.)

127 Q. Now, Mr. Fischer, if a person appears at your office and applies for special jury duty, may they make an application to serve as special jurors? A. If they are not on our list, sir, they have to fill out a qualifying blank,

which is the white one if it is a male. If they meet with the requirements, then we put them on the special juror list, but he would have to be sworn in as a juror first.

Q. The only thing you are interested in when you accept him as a special juror is that he be not against capital punishment? A. Free of that; yes, sir.

Q. How many special jurors are there in the County of 128
Bronx? A. We have approximately 784 or 783.

Q. Will your records indicate how many of the 784 are Negroes? A. No, sir. There is no way of determining that. A juror is a juror, white or black, race or creed, man or woman.

Q. Will your records indicate how many of those are Negroes? A. No, sir.

Q. Will your records indicate how many of the approximately 780 are women? A. Well, if you looked over the names you could get that; yes, sir.

Q. Do you keep a card index? A. We do, sir.

Q. Do you put down the sex of the person in the card 129
index? A. Only their name.

Q. Do you put down the color of the person? A. We do not.

Q. Are you or an associate of yours the only one that determines whether a person shall become a special juror or not? A. Well, Mr. Hanley as the deputy when the requirements are met. As secretary I sign it. Then it is required of Mr. Hanley, the deputy, to sign it when he 130
looks them over and checks on it.

Q. Does he interview them personally? A. Sometimes he does; yes.

Q. Who strikes out the names from the special jurors list? A. It is an office routine, an office mechanics. If a person moves from the county it is stricken off. If a person is deceased it is stricken off.

Q. Do you keep the same names on the special juror panel from year to year? A. We do.

131 Q. And do you keep a record of their service? A. We do.

Q. And do you keep a record of their convictions? A. No, sir; that's something we wouldn't know.

By Mr. Fleischman.

Q. Mr. Fischer, of your own knowledge, you cannot then definitely state whether or not there are any Negro jurors on the special panel? A. Well, we know there are.

Q. When you say you know there are, do you know that from your records? A. Yes, sir; from examining them personally.

132 Q. How many would you say there are on the special list? A. I couldn't even give you an estimate, because there are so many of them that come in. I couldn't tell you truthfully.

Q. You mean there are so many people that come into your office? A. No; colored people that we examine.

Q. And how many have you accepted? A. We couldn't tell you that. There is no way of telling.

133 Q. One, two, five, ten; can you give us an approximate idea? A. I couldn't tell you. Maybe two dozen; maybe three dozen.

Q. Maybe only five? A. Oh, no; that would be too small an amount. I should say from 1946 on I must have examined at least 500 myself.

Q. And how many of those 500 did you accept? A. That is, for regular jury work.

Q. I am concerned now, Mr. Fischer, with just the special list. A. Oh, I would say I examined maybe about a hundred, and of those maybe, well, not to pin me down, maybe a dozen.

134 Q. How many women would you say there are on that special list of jurors? A. I couldn't be exact, but I would say possibly 50. I wouldn't know exactly. Maybe there's 30; maybe there's 40, but there's quite a few names. If you check up on them you will see them.

. Do you know how many names of Negro jurors were
he drum when this special panel was drawn? A. No,
o not. There is no way of determining that.
. Do you know if any were in the drum? A. I couldn't
you.

Mr. Fleischman: That's all.

Mr. Foley. 135

. How many names do you put in the drum, Mr.
cher, when you draw a special panel? A. Why, there
one panel out, sir, and there were 600 and some odd
when this panel of 150 was drawn.
. Did you put into the drum all of the jurors who had
been drawn previously for service on the special panel?
Correct, sir.
. And however many Negroes or women there are on 136
special panel, their names were in the drum? A. Cor-

. Were you present when the drawing was had? A.
as.
. Was that on the third day of March, 1947? A. It

. Are you aware of any deliberate intent to exclude
roes or women from service on the special panel? A.
sir.
. Was the drawing supervised as required by law by 137
stice of the Supreme Court? A. It was, sir.
. And were the defendants represented by counsel
e? A. Not all four, but I believe there were two.
. Was any objection raised to the method of drawing?
t was not, sir.

Mr. Foley: That's all.

By Mr. Wilkinson.

Q. Mr. Fischer, in the selection of jurors do you have regard to the population of the county? A. Population of the county?

138 Mr. Foley: May I interrupt and ask is counsel referring now to the general panel of jurors or to the special panel?

Mr. Wilkinson: Special panel.

A. Not necessarily.

Q. Do you or your office fix the number of women that shall serve as special jurors? A. No, sir.

139 Q. Do you fix the number of men that shall serve as special jurors? A. Only the total amount of jurors of 800 shall be on that list, whether they be men or women jurors.

Q. Does your office recognize the colored population in this county with respect to the representation upon the jury? A. Well, in getting up the list from telephone books, voting records or whatever source we may use, we couldn't tell whether they be colored or white, outside of the names.

140 Q. Mr. Fischer, you know, do you not, that certain sections of the county are commonly known as colored sections where the colored population is thick and heavy? A. That's right.

Q. Does your office concentrate when looking for jurors on those sections, or does your office shy away from those sections? A. No. Only a short time ago—I guess about eight months ago—it so happened that in one of the election assembly districts which embodied quite a number of colored people, I would say that there were 400 that responded to the notices that we sent out.

Q. Was that 400 accepted for special jury duty? A. No, sir.

141 Q. In questioning for special jurors, has your office concentrated on the colored sections? A. No, sir.

Q. Have them concentrated on other sections other than colored? A. No, sir; in general.

Q. Now, you have stated it is the practice of your office at you often go so far as to look up the telephone book? That's right.

Q. That is, in search of jurors? A. Correct.

Q. Some of those that you would get from the telephone 142
ok, would they become special jurors? A. Well, if they et with the requirements. Of course, that's quite a ad question. I couldn't say for sure.

Mr. Wilkinson: No further questions.

Mr. Fleischman: That's all, your Honor.

(Witness excused.)

Mr. Wilkinson: That's all the evidence that the defendant Moore is submitting on the challenge.

Mr. Fleischman: That's all the defendant Lester Haughton is submitting on the challenge, your Honor. 143

Mr. Wilkinson: On the basis of the foregoing evidence the defendant Moore moves to sustain the challenge and to dismiss the panel.

Mr. Fleischman: The same thing for Lester Haughton.

The Court: Motion denied. Challenge disallowed.

Mr. Wilkinson: I take exception to the Court's finding.

Mr. Fleischman: I take exception in behalf of Lester Haughton.

The Court: Is that all, gentlemen? You have had everything you want now? 144

Mr. Fleischman: That's all.

Mr. Wilkinson: That's all, sir.

The Court: All right. We will proceed tomorrow morning at ten o'clock. The case is adjourned until ten o'clock tomorrow morning.

145

New York, March 21, 1947.

(TRIAL CONTINUED.)

Appearances: As noted on title page.

The Court: Proceed. You are allowed thirty peremptory challenges. I will pick two alternate jurors in this case.

Mr. Fleischman: At this time I would like the Court to take judicial notice of the fact that there are no colored jurors on the Special Panel of 150 jurors.

The Court: The Court will take notice of it. It is
146 apparent that there are no Negro jurors present at this time.

Mr. Wilkinson: I make the same request on behalf of the defendant Moore.

The Court: Proceed.

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By GEORGE
Assistant

HERMAN J.
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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM 1947

No. 485

GEORGE CORNELIUS MOORE and LESTER HAUGHTON,

Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

RESPONDENT'S BRIEF

SAMUEL J. FOLEY,
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State of New York,
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No. 485

GEORGE CORNELIUS MOORE and LESTER HAUGHTON,
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THE PEOPLE OF THE STATE OF NEW YORK,
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RESPONDENT'S BRIEF

Preliminary Statement

The petitioners were convicted of the crime of Murder in the First Degree, in the County Court, held in and for the County of Bronx, State of New York, and were sentenced to death on April 14, 1947.

Upon appeal to the Court of Appeals of the State of New York, the judgment of conviction was unanimously affirmed, as to each petitioner (297 N. Y. 734).

A *writ of certiorari* was granted by this Court, on December 22, 1947. This Court also ordered the execution of the sentence of death imposed on the petitioners stayed, pending the final disposition of the case by this Court.

The petitioners herein were charged with the crime of Murder in the First Degree in that, while acting in concert with each other and while engaged in the commission of an attempted robbery, they shot and killed one James M. Burke, a detective of the Police Force of the City of New York.

The evidence overwhelmingly established their guilt.

The respondent begs leave to refer this Court to the statement of facts set forth in the respondent's brief, in opposition to the petition for the *writ of certiorari* (pp. 2-5), and to the record on appeal herein.

Opinions of the State Courts

No opinion was rendered by the Trial Court, or by the Court of Appeals of the State of New York.

Proceedings in the Trial Court

On February 11, 1947, the Grand Jury of Bronx County, State of New York, filed an indictment against the petitioners, Moore and Haughton, for the crime of Murder in the First Degree.

Thereafter, Counsel was duly assigned, to each of the petitioners.

On February 19, 1947, each of the petitioners pleaded not guilty to the said indictment.

Thereafter, a motion was made, by the People, in the County Court, Bronx County, for a special jury, pursuant to the provisions of Section 749-aa of the Judiciary Law of the State of New York, to try the issues.[1]

This motion was opposed by Counsel for each of the petitioners.

The motion was granted on February 26, 1947, by the Hon. Harry Stackell, one of the Judges of the County Court of Bronx County, and it was ordered that a panel of 150 special jurors be drawn on the 3rd day of March, 1947.

---

[1] The Court of Appeals of the State of New York in the case of *People* v. *Hall*, 169 N. Y. 184, at page 197, held that the simple allegation that the indictment was for the crime of Murder in the First Degree was sufficient to justify the granting of such an application.

Such drawing was held and was supervised, as required by law, by a Justice of the Supreme Court of the State of New York.

Each of the petitioners was represented by Counsel at such drawing, and raised no objection, whatsoever, to the method of drawing.

On March 20, 1947, when the case was called for trial, before Hon. James M. Barrett, one of the County Judges of the County Court of Bronx County, each of the petitioners served a written challenge to the panel of jurors, upon the following grounds:

1. That Section 749-aa of the Judiciary Law of the State of New York is in violation of section 1 of the Fourteenth Amendment of the Constitution of the United States.

2. That qualified Negro jurors were improperly excluded from the list of special jurors, from which said jury panel was drawn.

3. That qualified women jurors were improperly excluded from the list of special jurors, from which said jury panel was drawn.

The challenge came on to be heard, and the minutes of this hearing can be found at page 36 to 48 inclusive of the record on appeal.

At the conclusion of the hearing, the challenge was disallowed, to which ruling the petitioners duly excepted.

Upon the appeal to the Court of Appeals, the petitioners did not, and they do not now, urge their third ground of challenge (alleged improper exclusion of women jurors).

After the challenge was disallowed, a jury was duly selected, and the petitioners tried on the indictment aforesaid. The jury returned a verdict of guilty of the crime of Murder in the First Degree, as to each petitioner.

The Questions Presented

The petitioners now urge that "the trial court erred in denying petitioners' challenge to the special jury panel", for the following reasons:

1. That Section 749-aa of the Judiciary Law of the State of New York is unconstitutional, and that the trial of the petitioners by a special jury rather than by a general jury denied to the petitioners the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States.

2. That "the statute set forth no standard to guide those charged with the selection of the special jurors and therefore enabled these officials in Bronx County to use the same list of approximately 800 special jurors in a County of 1,489,000 population, thereby denying to the petitioners the equal protection of the laws guaranteed to them by the Federal constitution."

3. That qualified Negroes were systematically, intentionally and deliberately excluded from the panel of jurors from which a trial jury was selected.

Outline of Argument

Our argument will be presented under the following headings:

1. The trial and conviction of the petitioners for the commission of the crime of Murder in the First Degree by a special jury, pursuant to Section 749-aa of the Judiciary Law of the State of New York, did not deny to the petitioners their rights under the Fourteenth Amendment to the Constitution of the United States.

2. The petitioners are in error in asserting that the same list of approximately 800 special jurors has been used since 1938.

3. There was no systematic, intentional and deliberate exclusion of Negroes from the panel of jurors from which the jury was selected in the instant case.

POINT I

The trial and conviction of the petitioners for the commission of the crime of Murder in the First Degree, by a special jury, pursuant to Section 749-aa of the Judiciary Law of the State of New York, did not deny to the petitioners their rights under the Fourteenth Amendment of the Constitution of the United States.

The petitioners, under their Point I, contend that Section 749-aa of the Judiciary Law of the State of New York is unconstitutional, in that it violates the Fourteenth Amendment of the Constitution of the United States.

It is their contention that special juries are convicting juries, and that their trial by a special jury denied them the equal protection of the laws, guaranteed them by the Fourteenth Amendment.

The contention of the petitioners that special juries are convicting juries was not even remotely suggested to the Trial Court, on the hearing of the challenge.

The Hearing on the Challenge Examined

On March 20, 1947, the petitioners were called to trial before Hon. James M. Barrett, one of the County Judges of Bronx County.

A panel of 150 special jurors, drawn on March 3, 1947, were present in court.

The record on appeal shows the following:

"APPEARANCES:

For the People:
SAMUEL J. FOLEY, Esq., District Attorney, Bronx County, and NICHOLAS F. DELAGI, Esq., Assistant District Attorney.

For Defendant Moore:
JOHN F. WILKINSON, Esq., and ISIDORE EHRMAN, Esq.

For Defendant Haughton:
I. SAUL FLEISCHMAN, Esq., and HENRY F. McDONOUGH, Esq.

* * * * * * *

The Court: There has just been submitted to me within the past 10 or 15 minutes a challenge on behalf of the defendant George Cornelius Moore and the defendant Lester Haughton as to the sufficiency of the panel that has been called to try this case. That is under Section 363 of the Code of Criminal Procedure. (A copy of this challenge was not served on the District Attorney until after the Court received the challenge this morning.)" (R. 36, 37).

Issue having been joined, the Court stated as follows:

"The Court: We will proceed to try the issue. All jurors are excused until tomorrow morning at ten minutes to ten.

All right, gentlemen, it is up to you to proceed" (R. 38).

The record on appeal, at pages 38 and 39, shows that the Court aided counsel for petitioners, in obtaining the witnesses they required and the evidence which they sought, in order to establish their grounds of challenge.

After a short recess, the Court made the following inquiries:

"The Court: Are you ready, gentlemen?
Mr. Wilkinson: Defendant Moore is ready.
Mr. Fleischman: Defendant Haughton is ready.

The Court: You made certain requests of me before. Have you had ample opportunity to look at the records you have asked to be produced?

Mr. Wilkinson: Yes, sir.

The Court: Are both sides ready to proceed?

Mr. Wilkinson: Yes, sir.

The Court: I understand the inquiry now is to be directed to the intentional elimination or disqualification of women and Negroes on the special jury panel.

Mr. Wilkinson: That is correct.

The Court: All right; proceed.

Mr. Fleischman: Intentional or improper elimination.

The Court: Swear the County Clerk" (R. 39, 40).

The petitioners then called Michael B. McHugh, County Clerk of Bronx County, and one William F. Fisher, employed in the County Clerk's Office, Division of Jurors.

Both these witnesses were interrogated by the petitioners and the respondent.

The record shows that the petitioners were at no time restricted or limited in their examination of these witnesses, nor were they prevented from calling any other witnesses or from producing any other evidence.

The record shows the following:

"Mr. Wilkinson: No further questions.

Mr. Fleischman: That's all, your Honor.

(Witness excused.)

Mr. Wilkinson: That's all the evidence that the defendant Moore is submitting on the challenge.

Mr. Fleischman: That's all the defendant Lester Haughton is submitting on the challenge, your Honor.

Mr. Wilkinson: On the basis of the foregoing evidence the defendant Moore moves to sustain the challenge and to dismiss the panel.

Mr. Fleischman: The same thing for Lester Haughton.

The Court: Motion denied. Challenge disallowed.

Mr. Wilkinson: I take exception to the Court's finding.

Mr. Fleischman: I take exception in behalf of Lester Haughton.

The Court: Is that all, gentlemen? You have had everything you want now?

Mr. Fleischman: That's all.

Mr. Wilkinson: That's all, sir.

The Court: All right. We will proceed tomorrow morning at ten o'clock. The case is adjourned until ten o'clock tomorrow morning" (R. 48).

The record then shows the following to have taken place the next morning:

"The Court: Proceed. You are allowed 30 peremptory challenges. I will pick two alternate jurors in this case.

Mr. Fleischman: At this time I would like the Court to take judicial notice of the fact that there are no colored jurors on the Special Panel of 150 jurors.

The Court: This Court will take notice of it. It is apparent that there are no negro jurors present at this time.

Mr. Wilkinson: I make the same request on behalf of the defendant, Moore.

The Court: Proceed" (R. 49).

Notwithstanding this state of the record petitioners now claim the Court erred in disallowing their challenge to the special jury panel.

It will be observed from the record of the trial of the challenge, that the inquiry was directed solely "to the intentional elimination or disqualification of women and negroes on the special jury panel" (R. 39).

The evidence adduced at the hearing of the challenge on the alleged intentional elimination or disqualification of negroes will be discussed under Point III of this brief.

A. Section 749-aa is constitutional.

The petitioners, as one of the grounds of their challenge, urged, before the Trial Court, that Section 749-aa of the Judiciary Law of the State of New York (Special

Jury Law) was unconstitutional, in that it violated the Fourteenth Amendment of the United States Constitution.

This ground of challenge was specified in their written challenge. They offered no evidence in support of this ground of challenge. They did not present to the Trial Court, on the hearing of the challenge, the matters now urged under their Point I.

However, the respondent begs leave to reply to the contention of the petitioners.

The Special Jury Statute, enacted in 1896, and re-enacted in its present form in 1901, has, at all times, when challenged as to its constitutionality, been held to be a proper legislative enactment (*People* v. *Dunn* (1899), 157 N. Y. 528; *People* v. *Meyer* (1900), 162 N. Y. 357; *People* v. *Hall* (1901), 169 N. Y. 184 (Cf. *Hall* v. *Johnson,* 186 U. S. 480); *People* v. *Conklin* (1903), 175 N. Y. 333; *People* v. *Wolter* (1911), 203 N. Y. 484; *People* v. *Buchalter* (1942), 289 N. Y. 181, aff'd 319 U. S. 427).

In view of these decisions, upholding the constitutionality of the Special Jury Law, the Trial Court properly disallowed the petitioners' challenge predicated upon the alleged ground of unconstitutionality.

Since these decisions, this Court, in the recent case of *Fay* v. *New York,* decided June 23, 1947 (U. S. Supreme Court, Law-ed. Advance Opinions 1946-1947, Vol. 91—No. 17), rehearing denied October 13, 1947, had the question of the constitutionality of Section 749-aa of the Judiciary Law of the State of New York before it.

This Court held the statute to be constitutional.

In the prevailing opinion, Mr. Justice Jackson, at page 1523 said:

> "We fail to perceive on its face any constitutional offense in the statutory standards prescribed for the special panel. The Act does not exclude, or authorize the clerk to exclude, any person or class because of race, creed, color or occupation. It imposes no qualification of an economic nature beyond that imposed by

the concededly valid general panel statute. Each of the grounds of elimination is reasonably and closely related to the juror's suitability for the kind of service the special panel requires or to his fitness to judge the kind of cases for which it is most frequently utilized. Not all of the grounds of elimination would appear relevant to the issues of the present case. But we know of no right of defendants to have a specially constituted panel which would include all persons who might be fitted to hear their particular and unique case. This panel is for service in a wide variety of cases and its eliminations must be judged in that light. We cannot overlook that one of the features which has tended to discredit jury trials is interminable examination and rejection of prospective jurors. In a metropolis with notoriously congested court calendars we cannot find it constitutionally forbidden to set up administrative procedures in advance of trial to eliminate from the panel those who, in a large proportion of cases, would be rejected by the court after its time had been taken in examination to ascertain the disqualifications. Many of the standards of elimination which the clerk is directed to apply in choice of the panel are those the court would have to apply to excuse a juror on challenge for cause."

B. Special juries are not convicting juries.

The petitioners, as was contended in *Fay* v. *New York, supra,* contend that special juries are convicting juries, and refer to the fourth annual report of the Judicial Council of the State of New York (pp. 46-48) in support of that contention.

Counsel for the petitioners further point to the result of their investigation of the records of convictions, in the County Court of Bronx County, to substantiate that claim.

They assert that from July 1, 1937, to June 30, 1946, there were 79% of convictions by special juries, as compared with 57% of convictions by ordinary juries; that of the 19 cases tried by special juries, during that period, there were 15 convictions and 4 acquittals.

Accepting the figures submitted by the petitioners, the respondent begs leave to point out that all of the cases in which special juries were used in Bronx County, from July 1, 1937, to June 30, 1946, were capital cases, with the exception of two. One of those two cases involved a manslaughter, arising out of an abortion; and the other, an involved case of criminally receiving stolen property, which took about three weeks to try.

In five of the above capital cases, in which verdicts of guilty were returned, the jury convicted of a lesser degree than that charged in the indictment.

So that, in nine of the nineteen cases tried, by special juries in Bronx County, the defendants were either acquitted or found guilty of lesser degrees of crime than that charged.

Surely, such a record does not support the contention of the petitioners that special juries are convicting juries.

The petitioners rely, heavily, on the annual reports of the Judicial Council of the State of New York in support of their contention.

Mr. Justice Jackson, in his opinion, in *Fay* v. *New York, supra,* at page 1528, with reference to the reports of the Judicial Council, said as follows:

> "While the Judicial Council has pointed out and investigated the different conviction ratios, it has at no time suggested that the special jury has been inclined to convict except where conviction was warranted. New York extends an appeal on law and fact as matter of right. If there were a tendency to convict improperly, the Judicial Council, which includes the Chief Judge of the Court of Appeals and the Presiding Justice of the Appellate Division, which courts review these cases, would know it. Despite the Council's desire to abolish this jury, no such reasons were ever assigned. No statistics are produced to show that special juries have been more often reversed on the facts than ordinary ones. Of course, it would be impossible for us to say even were we to examine the cases in detail whether the difference in percentage of convictions indicated a too great readiness to convict on the part of special juries

or to a too great readiness to acquit on the part of ordinary juries, or whether the disparity reflected a difference between the ordinary case and those selected for special jury trial, rather than a reflection of an attitude on the part of either panel. It may result from the greater attention and better counsel which the prosecution gives to these important cases."

The respondent respectfully submits that statistics have little value in determining what the attitude of jurors has been in the past.

Ever so many factors determine whether a juror in a given case will return a verdict of guilty. Some of those factors are:

1. Sympathy plays a great part in the trial of a criminal case. Experience has shown that where the crime is of a serious nature, or is affected with a great public interest, sympathy is less likely to play a part in the jury's consideration of the case. It is that type of case which is generally tried by a special jury in Bronx County.

The respondent has examined the records of the office of the District Attorney of Bronx County, for the purpose of pointing out the type of cases tried by general juries, in which there were acquittals, and in which sympathy for the defendants, because of the nature of the charge, undoubtedly, played a great part in the verdicts.

Between July 1, 1937, and June 30, 1946, there were 208 acquittals by general juries.

A table has been prepared to show the type of cases in which there were acquittals. This table may be found in Appendix A.

It will be seen, from this table, that 12 of the cases were misdemeanors, usually tried, in the City of New York, in the Court of Special Sessions, without a jury; and only triable in the County Court with a jury, after indictment by a Grand Jury, upon an order of the County Court certifying that, because a property right is involved, it is reasonable that such charge should be prosecuted by indictment (Sec. 31, New York City Criminal Courts Act).

The type of cases on this list, when contrasted with the type of cases tried by special juries, accounts for the disparity between the number of acquittals by general juries and the number of acquittals by special juries.

2. Capital cases, such as are tried, in the main, by special juries, in Bronx County, receive greater attention from the police, in their search for evidence, and more thorough preparation on the part of the prosecution.

It is common knowledge that only the ablest and most experienced prosecutors are assigned to the trial of capital cases. Thus, the case at bar was tried by the District Attorney himself who, in the past ten years, has tried none but capital cases.

3. In the type of cases tried by special juries, material witnesses are taken into custody and committed, so as to be available at the trial. Thus, in the case at bar, four important witnesses were committed, and testified upon the trial.

This practice results in material evidence being available, and lessens the opportunity, of those interested in bringing about an acquittal of the defendant, to tamper with such witnesses.

In the trial of ordinary cases, with general juries, this practice is rarely resorted to, because it would involve the commitment of a multitude of witnesses.

4. In 1930 the District Attorney of Bronx County established a system, which has been in continuous use since then. Experience has shown that this system accounts for the greater percentage of convictions in capital cases (the type of cases tried by special juries, almost exclusively, in Bronx County).

That system operates as follows:

An Assistant District Attorney is assigned, for a stated period, to what is known as a Felony and Homicide Assign-

ment; and is on duty for 24 hours each day, during such stated period.

In the case of a homicide, the Assistant District Attorney, who has this assignment, is notified by the Police Department, immediately upon the discovery of a homicide.

He is required to go to the scene of the crime, with a stenographer, and assume charge of the investigation.

Invariably, he finds, at the scene, members of the Police Department, the Medical Examiner assigned to Bronx County, technical experts of the Police Department, together with detectives of a specially formed squad of the Police Department, known as the Homicide Squad.

Whether there is an immediate arrest or not, all available witnesses are questioned, and their statements stenographically recorded.

Any and all evidence is carefully preserved, and every avenue of investigation is followed, under the supervision of the District Attorney.

This practice, as the record on appeal herein will attest, was followed in the case at bar.

The record, herein, shows how the District Attorney and the Police cooperated, in gathering and preserving all the available evidence.

In non-capital cases, with rare exceptions, the Assistant District Attorney, on the Felony and Homicide Assignment, is notified by the Police, for the first time, when an arrest has been made, and not as soon as the crime is discovered, as in homicide cases.

The Assistant then proceeds to the Police Precinct, where the defendant is in custody, and examines the defendant, as well as available witnesses.

Section 332 of the Code of Criminal Procedure of the State of New York provides, in part, that "a conviction shall not be had upon a plea of guilty, where the crime charged is or may be punishable by death".

In view of that statute, the Court may not accept a plea of guilty to the crime of Murder in the 1st Degree, since such crime is punishable by death.

Accordingly, every capital case, in which the District Attorney seeks to obtain a conviction of Murder in the 1st Degree, must be tried; and the defendant, even if he desires to plead guilty to Murder in the 1st Degree, is unable to do so.

However, in non-capital cases, a defendant, so desiring, may plead guilty to the indictment. This obviates the necessity of a trial.

A reference to the 1947 report of the Judicial Council of the State of New York (13th Annual Report) shows that from July 1, 1945, through June 30, 1946, out of a total of 532 convictions, 200 were convicted, as charged, by pleas of guilty, and only 17 were convicted by verdict of the jury; and that 308 were convicted by pleas of guilty to lesser degrees of the offense charged, and only 7 by verdict of the jury.

While the reports for the years prior to 1947 differ in the totals, an examination of such reports will bear out the statement of the respondent that a great number of the non-capital cases are disposed of by pleas of guilty, and that only a very small number are actually tried.

Thus, the practical result is that, in non-capital cases, defendants who know the strength of the People's case, or know that they have made confessions of their guilt to the District Attorney, in the presence of a stenographer, plead guilty, and a trial is, therefore, unnecessary.

Because of this right to interpose a plea of guilty, in non-capital cases, the cases in which no pleas of guilty are offered by defendants are cases, in most instances, where the defendants have made no confessions, or where the People's case is weak.

Accordingly, what remains to be tried of non-capital cases, are generally cases where, because of the weakness of the People's case, it is difficult to obtain a conviction.

This, we respectfully submit, also accounts for the disparity between the number of convictions by general juries and the number of convictions by special juries, trying capital cases, in the main, in Bronx County.

Since, for the most part, only capital cases have been tried by special juries in Bronx County, while ordinary "run-of-the-mill" cases have been tried by general juries, the difference in the percentage of convictions cannot be attributed to a "too great readiness to convict on the part of special juries or to a too great readiness to acquit on the part of ordinary juries".

The disparity in the percentage of convictions, it is respectfully submitted, reflects a difference between the ordinary case and the important case selected for special jury trial.

Each case, it is submitted, stands upon its own facts.

Notwithstanding the greater attention and more thorough preparation given to the trial of capital cases, tried by special juries, special juries acquit, or convict of a lesser degree of crime, where the evidence warrants it.

Thus, in Bronx County, from July 1, 1937 to June 30, 1946, special juries acquitted in four out of nineteen cases tried; in five cases they convicted of a lesser degree than that charged in the indictment; and in one case convicted of Murder in the First Degree, with a recommendation, by the jury, of life imprisonment.

It is respectfully submitted that the contention of the petitioners that special juries are convicting juries is without merit.

C. The petitioners' argument that there is no need for special juries is an argument addressed to legislative policy and not to constitutionality.

The petitioners, under their Point I, also urge "that there are no special qualifications required by special jurors as distinguished from general jurors". They assert that general jurors who are not opposed to capital punishment are qualified to serve as special jurors.

The evidence introduced on the hearing of the challenge shows that a special juror, in Bronx County, in addition to possessing the qualifications required of a general juror, must sign and swear to a separate application (Defend-

ants' Exhibit 1, R. 894), in which he makes the following statements:

> "I have not been convicted of a criminal offense or found guilty of fraud or misconduct by the judgment of any civil court.
>
> I do not possess conscientious opinions with regard to the death penalty which would preclude me from finding a defendant guilty, if the crime charged be punishable with death.
>
> I do not doubt my ability to lay aside opinions or impressions formed from NEWSPAPER READING OR HEARSAY, and to render an impartial verdict upon evidence, uninfluenced by any such opinions or impressions.
>
> I do not possess such opinions as would prevent my finding a verdict of guilty in any case upon CIRCUMSTANTIAL EVIDENCE.
>
> I have not such a prejudice against any LAW OF THE STATE as would preclude my finding a defendant guilty of violating such law.
>
> I have not such a prejudice against any particular DEFENSE to a criminal charge as would prevent my giving a fair and impartial trial upon the merits of such defense.
>
> I could in all cases give to a defendant, who fails to testify as a witness in his own behalf, the full benefit of the statutory provision that his neglect or REFUSAL TO SO TESTIFY as a witness in his own behalf does not create any presumption against him."

The information thus obtained from special jurors, concerning matters of vital importance both to the prosecution and to defendants, facilitates the selection of juries where special juries are employed.

This Court in *Fay* v. *New York, supra,* at pp. 1528, 1529, said:

> "The evidence in support of these objections may well, as the Judicial Council thought, warrant a political or social judgment that this special panel in 1945 was 'unnecessary and undesirable' and that the Legislature should abolish it. But it is quite another matter to say that this Federal Court has a mandate from

the Constitution to disable the special jury by setting aside its convictions. The great disparity between a legislative policy or a political judgment on the one hand and a constitutional or legal judgment on the other, finds striking illustration in the position taken by the highest judicial personages in New York State who joined in the recommendation to abolish the special jury.

Two members of the Council who joined in proposing Legislation to abolish the dual system sat in this case and abstained from putting their legislative recommendation into a court decision—they sustained as constitutional the system they would abolish as matter of policy. Our function concerns only constitutionality and we turn to the bearing of federal constitutional provisions on the legal issues.

It is not easy, and it should not be easy, for defendants to have proceedings set aside and held for naught on constitutional grounds when they have accepted as satisfactory all of the individual jurors who sat in their case, * * *. This court has long dealt and must continue to deal with these controversies from State Courts with self-imposed restraints intended to protect itself and the state against irresponsible exercise of its unappealable power."

Reference is also made by the petitioners to the fact that no special jurors are employed in Richmond County, in the City of New York, in support of their contention that there is no need for special jurors.

According to the 1947 "World Almanac", the estimated population of Richmond County for 1947 was 186,000 as against 1,489,000 for the County of Bronx (p. 912).

It surely cannot be properly urged that the jury problems, and the problems arising in the administration of the criminal law in a county with a population of 186,000 are the same as those in a county with a population close to a million and a half (a population in excess of that found in any city of the United States with the exception of five cities).

POINT II

The petitioners are in error in asserting that the same list of approximately 800 special jurors has been used since 1938.

Under their Point II the petitioners, repeatedly, assert that "the District Attorney has for the past nine years prosecuted criminal cases by special jury before the same 800 special jurors".

This statement is without foundation.

The evidence adduced, at the hearing of the challenge, shows that, from time to time, there are "vacancies" in the special jury list, due to deaths and removals from the county (R. 42, 44).

"Vacancies" are also created by jurors reaching the age of 70, the retirement age, under the law.

The respondent has caused an investigation to be made, to determine the number of jurors stricken from the special jury list of 800, and those added, for the period from 1938 to 1946, the period referred to by the petitioners.

Thus, the following table shows the number of special jurors added to, and stricken from, the special jury list, for the said nine years:

Year	*Added*	*Stricken*
1938	41	98
1939	53	52
1940	1	69
1941	222	133
1942	43	88
1943	214	160
1944	95	117
1945	81	77
1946	45	63
	795	857

The petitioners also make the statement that the fact that the "self-same" special jurors of 800 have been used "year after year" "accounts for the high percentage of convictions by special jurors as compared to ordinary juries".

In view of this statement, the respondent has caused an investigation to be made of the trial jury in the case at bar.

That investigation revealed the following:

Of the twelve jurors who sat in the case at bar, and returned a verdict of guilty against the petitioners, ten had never, before, sat as special jurors; the remaining two sat as special jurors, in one case each, during the trial of which cases pleas of guilty to lesser degrees of the crime charged, were interposed, by the defendants on trial, and accepted by the Court, so that these two jurors were never called upon to render a verdict.

It is therefore respectfully submitted that petitioners' statement "that the 800 special jurors have been the same for the past nine years", and that that accounts for the high percentage of convictions; is contrary to the facts.

The petitioners refer to the testimony of William F. Fisher, in which he denies that the County Clerk keeps a record of convictions by special jurors. Despite this positive denial, which stands uncontradicted, they ask that this testimony of Fisher be "discounted".

In the case at bar, the records show that the petitioners raised no objection to the manner of drawing, which drawing was supervised by a Justice of the Supreme Court, as required by law.

At no time, on the trial of the challenge, was it urged or even suggested that there was any impropriety on the part of the County Clerk in the method of drawing the jury, or that he entertained any prejudice which precluded him for drawing an unbiased jury.

There is not the slightest evidence, in the case at bar, to indicate that the County Clerk had any motive, whatsoever, for selecting "convicting special jurors".

As stated in 50 *C. J. S.*, p. 1026, Section 265:

> "On a challenge to the array or motion to quash the venire, the burden is on the party presenting the challenge or motion to prove the facts alleged therein. It will be presumed, in the absence of evidence to the contrary, that the officers charged with the duty of selecting, drawing and summoning the jury have acted faithfully and according to law, and the burden of showing the contrary is on the challenging party. • • •"

POINT III

There was no systematic, intentional and deliberate exclusion of negroes from the panel of jurors from which the jury was selected in the instant case.

> "It is fundamental in questioning the composition of a jury that a mere showing that a class was not represented in a particular jury is not enough; there must be a clear showing that its absence was caused by discrimination, and in nearly all cases it has been shown to have persisted over many years. Virginia v. Rives, 100 U. S. 313, 322, 323, 25 L. ed. 667, 670, 671; Martin v. Texas, 200 U. S. 316, 320, 321, 50 L. ed. 497, 498, 499, 26 S. Ct. 338; Thomas v. Texas, 212 U. S. 278, 282, 53 L. ed. 512, 513, 29 S. Ct. 393; Smith v. Texas, 311 U. S. 128, 85 L. ed. 84, 61 S. Ct. 164; Hill v. Texas, 316 U. S. 400, 86 L. ed. 1559, 62 S. Ct. 1159; Akins v. Texas, 325 U. S. 398, 89 L. ed. 1692, 65 S. Ct. 1276, supra. Also, when discrimination of an unconstitutional kind is alleged, the burden of proving it purposeful and intentional is on the defendant. Tarrance v. Florida, 188 U. S. 519, 47 L. ed. 572, 23 S. Ct. 402; Martin v. Texas, 200 U. S. 316, 50 L. ed. 497, 26 S. Ct. 338; Norris v. Alabama, 294 U. S. 587, 79 L. ed. 1074, 55 S. Ct. 579; Snowden v. Hughes, 321 U. S. 1, 8, 9, 88 L. ed. 497, 502, 503, 64 S. Ct. 397; Akins v. Texas, 325 U. S. 398, 400, 89 L. ed. 1692, 1694, 65 S. Ct. 1276."

Fay v. *New York, supra,* 1530.

The evidence introduced by the petitioners to establish their ground of challenge that negroes were systematically, intentionally, and deliberately excluded from the panel of jurors, wholly fails to substantiate that claim.

The petitioners, upon the trial of the challenge, called one William F. Fischer, employed in the County Clerk's Office, Bronx, Division of Jurors Office, who supervised the compiling of the list of special jurors.

He testified that under the law he was required to prepare a list of 800 special jurors; that such list was made up from the list of regular jurors; that he could not tell, from the records, how many on the special jury list were negroes or whites, since no record was made as to color, race or creed, in the selection of special or regular jurors (R. 41-48).

He testified that, because of that fact, he was unable to state how many negroes were on the special jury list, but said that he was certain that there were some.

Thus, his testimony on that point was as follows:

"Q. Mr. Fischer, of your own knowledge, you cannot then definitely state whether or not there are any Negro jurors on the special panel? A. Well, we know there are.

Q. When you say you know there are, do you know that from your records? A. Yes, sir; from examining them personally.

Q. How many would you say there are on the special list? A. I couldn't even give you an estimate, because there are so many of them that come in. I couldn't tell you truthfully.

Q. You mean there are so many people that come into your office? A. No; colored people that we examine.

Q. And how many have you accepted? A. We couldn't tell you that. There is no way of telling.

Q. One, two, five, ten; can you give us an approximate idea? A. I couldn't tell you maybe two dozen; maybe three dozen.

Q. Maybe only five? A. Oh, no; that would be too small an amount. I should say from 1946 on I must have examined at least 500 myself.

Q. And how many of those 500 did you accept? A. That is, for regular jury work.

Q. I am concerned now, Mr. Fischer, with just the special list. A. Oh, I would say I examined maybe about a hundred, and of those maybe, well not to pin me down, maybe a dozen" (R. 44-45).

Fischer also testified that he was not aware of any deliberate intent to exclude negroes from service on special juries; that the drawing of the special jury panel for the instant case was supervised by a Justice of the Supreme Court; that the petitioners were represented by counsel at the drawing, and that no objection was raised to the method of drawing (R. 46).

The foregoing testimony of Fischer utterly fails to establish any systematic, purposeful and deliberate exclusion of negroes from the special jury list.

The uncontradicted testimony is that no person was excluded because of race, creed or color.

The petitioners urge, "That of 500 negro jurors examined for jury duty approximately twelve were selected as special jurors on a special jury panel of 783 or 784."

The petitioners are in error in stating that twelve special jurors were selected out of 500 negroes examined.

The evidence on this point, though not very clear, indicates that 500 negroes were examined "for regular jury work"; that 100 were examined for special jury service, and that of that number about twelve negroes were selected (R. 44-45).

In the recent case of *Patton* v. *State of Mississippi* (68 S. Ct. 184), decided by this Court on December 8, 1947, this Court reiterated the principle that it is only where there is a systematic, intentional and deliberate exclusion of negroes from jury duty that there can be said to be a denial of constitutional rights.

Thus, this Court, at page 185, said:

"Sixty seven years ago this court held that state exclusion of negroes from grand and petit juries solely

> because of their race denied negro defendants in criminal cases the equal protection of the laws required by the Fourteenth Amendment. Strauder v. State of West Virginia, 1880, 100 U. S. 303, 25 L. Ed. 664. A long and unbroken line of our decisions since then has reiterated that principle regardless of whether the discrimination was embodied in statute or was apparent from the administrative practices of state jury selection officials, and regardless of whether the system for depriving defendants of their rights was 'ingenious or ingenuous'.
>
> Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case. • • • "

The petitioners do not claim that discrimination against negroes is found in the statute involved herein. Nor do they claim that there is direct evidence of deliberate discrimination on the part of the officials charged with the drawing of special jurors.

However, they presume this from the fact that there were no negroes on the panel of 150 drawn for the case at bar, and from the fact that more negroes were not on the special jury list.

Notwithstanding the direct and positive testimony of the witness Fisher, which was uncontradicted, that there was no discrimination of any kind against negroes, and the fact that the testimony shows that there were in fact about two or three dozen negroes on the special jury list, the petitioners ask this Court to presume such discrimination.

As was said by this Court in *Tarrance* v. *Florida* (188 U. S. 519, at p. 520):

> "• • • But such an actual discrimination is not presumed. It must be proved or admitted. • • • "

In *Snowden* v. *Hughes* (321 U. S. 1, at pp. 8, 9) this Court said:

> "• • • But a discriminatory purpose is not presumed, Tarrance v. Florida, 188 U. S. 519, 520; there

must be a showing of 'clear and intentional discrimination,' Gundling v. Chicago, 177 U. S. 183, 186; see Ah Sin v. Wittman, 198 U. S. 500, 507-8; Bailey v. Alabama, 219 U. S. 219, 231. Thus the denial of equal protection by the exclusion of negroes from a jury may be shown by extrinsic evidence of a purposeful discriminatory administration of a statute fair on its face. * * *. But a mere showing that negroes were not included in a particular jury is not enough; there must be a showing of actual discrimination because of race. Virginia v. Rives, 100 U. S. 313, 322-3; Martin v. Texas, 200 U. S. 316, 320-21; Thomas v. Texas, 212 U. S. 278, 282; cf. Williams v. Mississippi, 170 U. S. 213, 225."

In the case of *Akins* v. *Texas* (325 U. S. 398, pp. 400, 401), this Court said:

"The Fourteenth Amendment forbids any discrimination against a race in the selection of a grand jury. * * * The burden is, of course, upon the defendant to establish the discrimination. Tarrance v. Florida, 188 U. S. 519, 520; Martin v. Texas, 200 U. S. 316; Norris v. Alabama, 294 U. S. 587, 590. An allegation of discriminatory practices in selecting a grand jury panel challenges an essential element of proper judicial procedure—the requirement of fairness on the part of the judicial arm of government in dealing with persons charged with criminal offenses. It cannot lightly be concluded that officers of the courts disregard this accepted standard of justice."

There is nothing in the testimony of Fisher which can be said to suggest that he was prejudiced against negroes, and that they were discriminated against because of such prejudice.

On the contrary, Fisher was most emphatic in his testimony that no prejudice against negroes existed. Thus, his testimony is that "a juror is a juror, white or black, race or creed, man or woman" (R. 43).

The petitioners rely heavily upon the case of *Smith* v. *Texas* (311 U. S. 128). That case is clearly distinguishable from the case at bar.

It is a matter of common knowledge that the conditions which obtain in the States of Texas, Mississippi and other southern States are entirely different from those which obtain in the State of New York. The unhappy relations between the white and colored races existing in the southern States are not to be found in the State of New York.

The State of New York recognizes the equality of all men, regardless of race, creed or color. Whenever the State of New York has spoken officially, it was to uphold this principle of equality of all races.

In Appendix B, the respondent has listed a number of provisions in the Constitution of the State of New York, and in the statutes of the State, indicating, clearly, the policy of the State of New York with respect to discrimination on account of color, race, creed or national origin.

Negro Population in Bronx County

At the hearing of the challenge, the petitioners did not offer any evidence with respect to the population of Bronx County, white or colored. They now make reference to this matter, for the first time, and refer to statistics that were not before the Trial Court.

In view of that, the respondent begs leave to reply, in order to show the true situation.

The United States Census figures show the following:

POPULATION OF BRONX COUNTY, NEW YORK [2].

Year	*Total Population*	*White*	*Negro*	*Negro Proportion*
1920	732,016	726,990	5,026	.7%
1930	1,265,258	1,251,823	13,435	1.0%
1940	1,394,711	1,370,319	24,892	1.7%

[2] Total Census of Population for Year 1940, Vol. 2, Part 5, Page 163, Table D-35.

Thus, it will be seen that until April, 1940, when the official United States Census was taken, the negro population in Bronx County was very small.

There is no doubt but that the negro population of Bronx County has increased, since 1940. The extent of that increase is largely conjectural.

In Appendix D of the petitioners' brief there appears a copy of a letter, dated January 23, 1948, from one Bernard Lander, which purports to give an estimate of the negro population in Bronx County.

According to this estimate, the total negro population of Bronx County is 192,066.

Upon inquiry by the respondent, the said Bernard Lander advised the respondent as follows: "When I wrote of the most authoritative official City sources, I was referring to the estimate of New York City's negro population which I received from the Police Department."

The respondent made inquiry of the Police Commissioner of the City of New York with respect to this estimate.

On January 28, 1948, the respondent received a letter, dated January 28, 1948, from the Police Commissioner of the City of New York, a copy of which is set forth in Appendix C.

In that letter the Police Commissioner wrote the following:

> "As per attached copy of Letter, I have advised Mr. Bernard Lander, Associate Director, Mayor's Committee on Unity, that the figure of 192,066 originally given him was not solely for negroes but included all persons in Bronx County not of the white race and that a re-survey, verified by general information from various sources including the Urban League of Greater New York, indicates that the negro population of Bronx County is now between 65,000 and 70,000 persons."

The figures originally furnished Mr. Landers, on January 22, 1948, by the Acting Secretary to the Police Commis-

sioner, appeared under the following heading: "Approximate Colored Population", and not approximate negro population.

It is respectfully pointed out that the estimate of the negro population made by the Police Department, as appears in the letter of January 28, 1948, to the respondent from the Police Commissioner, was not the result of a census, but was a mere approximation or guess on the part of the Police Officials.

Annexed (Appendix D) is a letter from Mr. Landers, dated February 4, 1948, to I. Saul Fleischman, one of the attorneys herein, revising the estimate of the negro population.

The figures of 65,000 to 70,000 represent less than 5% of the total population of Bronx County, as of January, 1948.

There still remain many questions which cannot be answered. It is not known in what year the increase in population occurred; whether the negroes who moved into Bronx County remained there, or were migratory; the age, occupation, education, and property possessed by these people, who came to the Bronx since 1940, and their general eligibility and availability for jury service, are all matters of speculation.

Whether or Not There Was a Deliberate and Intentional Exclusion of Negroes Was a Question of Fact

The decision of the Trial Court, in disallowing the challenge, imports a finding, by that Court, that the evidence did not establish any deliberate and intentional exclusion of negroes.

That finding was unanimously affirmed by the Court of Appeals of the State of New York.

This Court has said that it will accord great respect to the conclusions of the state judiciary (*Akins* v. *Texas*, supra, at p. 402), and that it will accept the conclusion of the trier on disputed issues "unless it is so lacking in sup-

port in the evidence that to give it effect would work that fundamental unfairness which is at war with due process".

The record in the instant case not only shows that the petitioners failed to establish their claim that there was a systematic, intentional and deliberate exclusion of negroes from the special jury panel, but it affirmatively appears from the record that negroes, from time to time, were examined as to their qualifications for special jury service; and that a number of negroes were, in fact, selected for such service, and their names appeared on the special jury list, and were in the drum from which the jurors' names were selected.

The mere fact that there were no negroes on the panel of 150 jurors drawn in the instant case is no proof that there was discrimination against them.

> "Even in the Negro cases this Court has never undertaken to say that a want of proportionate representation of groups, which is not proved to be deliberate and intentional, is sufficient to violate the Constitution. Akins v. State of Texas, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276 * * *."

Fay v. *New York, supra,* at pp. 1533-1534.

It is respectfully submitted that the petitioners have not sustained the burden of establishing their claim that there was purposeful and intentional discrimination against negroes.

Section 13 of the Civil Rights Law of the State of New York provides as follows:

> "SECTION 13. Right to serve on juries. No citizen of the State possessing all other qualifications which are may be required or prescribed by law, shall be disqualified to serve as a grand or petit juror in any court of this State on account of race, creed, color, national origin, or sex, and any person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for any of the causes aforesaid shall, on conviction thereof, be

guilty of a misdemeanor and be fined not less than $100.00 nor more than Five Hundred Dollars or imprisoned not less than thirty days, nor more than ninety days, or both such fine and imprisonment."

Similarly, Congress on March , 1875 enacted, that

"'No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service by a grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude;' and made it a crime for any officer to exclude any citizen on those grounds. * * *."

Fay v. *New York, supra,* at page 1529.

In the light of the two foregoing statutes, it is highly improbable that a public officer charged with the duty of summoning and selecting jurors, having no motive, whatsoever, for discrimination against negroes, would make himself amenable to the foregoing statutes, by deliberately excluding members of that race from jury service.

As was said by Mr. Justice Jackson, in his opinion in *Fay* v. *New York, supra,* at page 1535:

"* * * The defendants have shown no intentional and purposeful exclusion of any class, and they have shown none that was prejudicial to them. They have had a fair trial, and no reason appears why they should escape its results."

CONCLUSION

The judgments under review should be affirmed.

Respectfully submitted,

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State of New York,
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HERMAN J. FLIEDERBLUM,
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APPENDIX A

List of Cases Tried by General Juries Between July 1, 1937, and June 30, 1946, Resulting in Acquittals

Arson	2
Abduction	1
Abortion	4
Assault	40
Burglary—Stores	13
" —Dwelling	9
Criminally Receiving Stolen Property	5
Driving While Intoxicated (Misdemeanor)	2
Compulsory Prostitution	1
Extortion	4
Forgery	3
Grand Larceny—autos	16
" " —other cases	22
Incest	1
Indecent Exposure (Misdemeanor)	2
Malicious Injury to Property (Misdemeanor)	1
Maiming	1
Manslaughter	13
Rape (6 Rape, first degree); (4 Rape, 2nd degree, Statutory)	10
Robbery	20
Seduction	1
Sodomy	7
Section 483-A Penal Law (Carnal Abuse of a Child)	8
Section 1897 Penal Law (Carrying and Using Dangerous Weapons)	8
Section 1053-A (Criminal Negligence in the Operation of a Vehicle Resulting in a Death)	6
Section 986 Penal Law (Bookmaking) (Misdemeanor)	1
Section 100 Alcoholic Beverage Control Law (Misdemeanor)	2
Section 421 Penal Law (Untrue and Misleading Advertisements) (Misdemeanor)	2
Section 973 Penal Law (Keeping Gaming and Betting Establishments) (Misdemeanor)	1
Section 962 Penal Law ("Kick-back" of wages) (Misdemeanor)	1
Section 1826 Penal Law (Taking Unlawful Fees)	1
	208

APPENDIX B

Article I, Section 11 of the Constitution of the State of New York provides for the equal protection of the laws and no discrimination in civil rights.

Section 700 of the Penal Law of the State of New York makes it a misdemeanor to discriminate against any person in his civil rights on account of race, creed, color or national origin.

Section 13 of the Civil Rights Law provides that no person shall be disqualified as a juror on account of race, creed, color, national origin or sex; and provides that any person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any juror because of said causes shall be guilty of a misdemeanor.

Section 40 of the Civil Rights Law prohibits discrimination in places of public accommodation, resort or amusement because of race, creed or color etc.

Section 42 of the Civil Rights Law prohibits discrimination by utility companies because of race, creed, color or national origin.

Section 43 of the Civil Rights Law prohibits discrimination by labor organizations, because of race, creed, or color.

Chapter 118 of the Laws of 1945 of the State of New York, creates a State Commission Against Discrimination.

By Section J-41 1.2 of the Administrative Code of the City of New York, discrimination against any person, on account of race, color, or creed is prohibited, in tax exempt projects in the City of New York.

APPENDIX C

SEAL

THE POLICE COMMISSIONER.
CITY OF NEW YORK

January 28th, 1948.

Mr. George Tilzer
Assistant District Attorney
District Attorney's Office
Bronx County, New York.

Re: George Cornelius Moore and
Lester Haughton, Petitioners

against

The People of the State of
New York, Respondent.

Dear Mr. Tilzer:

With reference to your communication of January 27th, 1948, a re-survey has been conducted by this Department, which discloses that the negro population of Bronx County, City of New York, is now estimated to be between 65,000 and 70,000 persons.

As per attached copy of letter, I have advised Mr. Bernard Lander, Associate Director, Mayor's Committee on Unity, that the figure of 192,066 originally given him was not solely for negroes but included all persons in Bronx County not of the white race and that a re-survey, verified by general information from various sources including the Urban League of Greater New York, indicates that the negro population of Bronx County is now between 65,000 and 70,000 persons.

Sincerely yours,

/s/ ARTHUR W. WALLANDER,
Police Commissioner.

SEAL

THE POLICE COMMISSIONER
CITY OF NEW YORK

January 28th, 1948.

Mr. Bernard Lander
Associate Director
Mayor's Committee on Unity
Room 705, Municipal Building
Brooklyn, New York

Dear Sir:

On January 22nd, 1948, you were advised in a communication from this office that the estimated negro population of Bronx County, City of New York, was approximately 192,066. This information was sent you in accordance with your telephone request of January 12th, 1948, as Associate Director of the Mayor's Committee on Unity.

A re-survey has been made by the Department relative to the statistics quoted for Bronx County and it has been found that the figures given you under date of January 22nd, 1948, were not solely for the negro population but included all persons in Bronx County not of the white race. Statistics revealed by the new survey, as verified by general information obtained from various sources including the Urban League of Greater New York, indicates that the negro population of Bronx County is now between 65,000 and 70,000 persons.

The above information is forwarded you so that you may correct your records in this respect.

Very truly yours,

ARTHUR W. WALLANDER,
Police Commissioner.

s.

cc—Asst. District Attorney
George Tilzer
Bronx County

APPENDIX D

February 4, 1948

Mr. I. Saul Fleischman
160 Broadway
New York 7, N. Y.

Dear Mr. Fleischman:

I am enclosing a copy of a letter I received from the Police Commissioner on January 28, 1948, which revises our estimate of the Negro population of Bronx County which I sent to you on January 23, in response to your request for such information.

Sincerely yours,

Bernard Lander
Associate Director

BL/za
encl.

SUPREME COURT OF THE UNITED STATES

No. 485.—October Term, 1947.

George Cornelius Moore and Lester Haughton, Petitioners, v. The People of the State of New York.	On Writ of Certiorari to the Court of Appeals of the State of New York.

[March 29, 1948.]

Mr. Justice Jackson delivered the opinion of the Court.

Petitioners were indicted in Bronx County, New York, on February 11, 1947, for the crime of murder in the first degree. The District Attorney moved the court for an order that the trial be by a special jury, pursuant to New York law, which motion was granted over opposition on behalf of defendants by assigned counsel. One hundred and fifty names were drawn from the special jury panel, under supervision of a Justice of the State Supreme Court, in the presence of defendants' counsel and without objection.

When the case was called for trial defendants, as permitted by the state practice, served a written challenge to the panel of jurors upon the following grounds:

1. That § 749–aa of the Judiciary Law of the State of New York is in violation of § 1 of the Fourteenth Amendment to the Constitution of the United States.

2. That qualified Negro jurors were improperly excluded from the list of special jurors, from which said jury panel was drawn.

3. That qualified women jurors were improperly excluded from the list of special jurors, from which said jury panel was drawn.

After full hearing, the challenge was disallowed and petitioners were tried and convicted. On appeal to the Court of Appeals, the third ground of challenge to the jury panel was abandoned and the convictions were affirmed. We granted certiorari on a petition raising the remaining grounds. 332 U. S. —.

The constitutionality of the New York special jury statutes has but recently been sustained by this Court, *Fay* v. *New York*, 332 U. S. 261, against a better supported challenge than is here presented, and the issue warrants little discussion at this time.

Some effort is made by statistics to differentiate this case from the precedent one as to the ratio of convictions before special juries contrasted with that before ordinary juries. The defendants present to us a study from July 1, 1937, to June 30, 1946, which indicates that special juries in Bronx County returned 15 convictions and 4 acquittals during the period and concludes that the special jury convicted in 79% of the cases while the general juries convicted in 57%. The District Attorney responds that in 5 of these 19 cases, the special jury returned conviction in a lesser degree than that charged and, hence in 9 out of 19 cases withheld all or part of what the State asked. Moreover, it is said that all but two were capital cases, another was for manslaughter and one for criminally receiving stolen property. It should be observed that the number of cases involved in these statements is too small to afford a secure basis for generalizing as to the convicting propensities of the two jury panels, even if the cases were comparable. But it appears that in Bronx County a system of special and intensive investigation is applied to capital cases from the moment they are reported, more careful preparation is given them and they are tried by the most experienced prosecutors. This makes this class of cases not fairly comparable with the run-of-the-mill cases, felony and misdemeanor, that are

included in the ordinary jury statistics. Moreover, none of these facts were laid before the trial court which was in the best position to analyze, supplement or interpret them. We think on this part of the challenge no question is presented that was not disposed of in *Fay* v. *New York, supra.* Indeed, on opening the hearing on defendants' challenge the trial court said, "I understand the inquiry now is to be directed to the intentional elimination or disqualification of women and Negroes on the special jury panel." Counsel for both defendants assented to this definition of the issues and no evidence on other subjects was offered.

Petitioners' remaining point is that "the trial of the petitioners, Negroes, by a jury selected from a panel from which Negroes were systematically, intentionally and deliberately excluded, denied petitioners the equal protection of law and due process of law guaranteed them by the Constitution of the United States." If the evidence supported the assumption of fact included in this statement, the point would be of compelling merit. The law on this subject is now so settled that we no longer find it necessary to write out expositions of the Constitution in this regard. See *Bronson et al.* v. *North Carolina,* 333 U. S.—, decided March 15, 1948.

It is admitted that on this panel of one hundred and fifty there were no Negroes. But not only is the record wanting in proof of intentional and systematic exclusion—the only witnesses sworn testified that there was no such practice or intent. Nothing in the background facts discredits this testimony. The census figures give a proportion of Negro-to-white population in that county of .7% in 1920, 1.0% in 1930, and 1.7% in 1940. It is admitted that since the last census the Negro population has considerably increased. According to one estimate, the number of colored inhabitants, which in 1940 was 24,892, has increased to 192,066 in 1948. The same estimator

later revised the figures to between 65,000 and 70,000. Neither estimate was before the trial court, and no evidence or finding gives us judicially approved data. Of course, new wartime arrivals take some time to qualify as active members of the community and its machinery of justice cannot be expected instantaneously to reflect their presence. The official who compiled the jury lists testified as to Negro jurors that "from 1946 on I must have examined at least 500 myself." The number accepted for service could not be ascertained from the records, which make no notation of color, but he testified that there were "maybe two dozen; maybe three dozen." For the special panel, he testified that he had examined an estimated one hundred Negroes and had accepted "maybe a dozen." The testimony is undenied.

The record is utterly devoid of proof of systematic, intentional and deliberate exclusion of Negroes from jury duty.

The judgment is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 485.—October Term, 1947.

George Cornelius Moore and Lester Haughton, Petitioners, *v.* The People of the State of New York.	On Writ of Certiorari to the Court of Appeals of the State of New York.

[March 29, 1948.]

Mr. Justice Murphy, with whom Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Rutledge concur, dissenting.

This case represents a tragic consequence that can flow from the use of the "blue ribbon" jury. Two men must forfeit their lives after having been convicted of murder not by a jury of their peers, not by a jury chosen from a fair cross-section of the community, but by a jury drawn from a special group of individuals singled out in a manner inconsistent with the democratic ideals of the jury system. That group was chosen because they possessed some trait or characteristic which distinguished them from the general panel of jurors, some qualification which made them more desirable for the State's purpose of securing the conviction of the two petitioners. Such a basis for jury selection has no place in our constitutional way of life. It contravenes the most elementary notions of equal protection and I can no more acquiesce in its use in this case than I was able to do in *Fay* v. *New York*, 332 U. S. 261.

The constitutional invalidity of this "blue ribbon" system does not depend upon proof of the systematic and intentional exclusion of any economic, racial or social group. Nor does it rest upon a demonstration that "blue ribbon" juries are more inclined to convict than ordinary

juries. Such factors are frequently, if not invariably, present in "blue ribbon" situations, though proof is extremely difficult. But they are at best only the end products of the system, not the root evil.

The vice lies in the very concept of "blue ribbon" panels—the systematic and intentional exclusion of all but the "best" or the most learned or intelligent of the general jurors. Such panels are completely at war with the democratic theory of our jury system, a theory formulated out of the experience of generations. One is constitutionally entitled to be judged by a fair sampling of all one's neighbors who are qualified, not merely those with superior intelligence or learning. Jury panels are supposed to be representative of all qualified classes. Within those classes, of course, are persons with varying degrees of intelligence, wealth, education, ability and experience. But it is from that welter of qualified individuals, who meet specified minimum standards, that juries are to be chosen. Any method that permits only the "best" of these to be selected opens the way to grave abuses. The jury is then in danger of losing its democratic flavor and becoming the instrument of the select few.

Hence the "blue ribbon" method of selecting only the "best" of the general jurors, a method instituted with the highest of intentions, does violence to the fundamental precepts of the jury system. Appeals to administrative convenience do not soften that violence. And since the method deprives the defendant of the protection accorded others who are able to draw upon the general panel, it falls under the ban of the Fourteenth Amendment. I would therefore reverse the judgment below.